FOR LIBRARY USE ONLY

CA2ALZ 1
73A21
v.7

ALBERTA LEGISLATURE LIBRARY
3 3398 00205 0739

GOV DOC

IN THE MATTER of the Public Inquiries Act, R.S.A. 1970 C.296 and amendments thereto

AND IN THE MATTER of the Public Inquiry by A.M. Harradence, Q.C., pursuant to Order in Council 1295/73 dated August 21, 1973 into the alleged use of excessive force by Correctional Officers upon inmates of the Calgary Correctional Institution during the evening of July 17, 1973 and any other similar instances.

P U B L I C I N Q U I R Y

Proceedings taken in the Club Room at the Jubilee Auditorium, Calgary, Alberta, commencing on the 1st day of October A.D. 1973.

Volume VII

CA2ALZ 1
73A21
v.7

Digitized by the Internet Archive
in 2026 with funding from
Legislative Assembly of Alberta - Alberta Legislature Library

I N D E X

WITNESSES

		PAGE
JOHN BERNARD HARWIG		
Examination	by Mr. Peacock	898
Cross-Examination	by Mr. Stilwell	912
Cross-Examination	by Mr. Macdonald	917
Cross-Examination	by Mr. Meurin	918
Examination	by The Commissioner ...	923
Re-Cross-Examination	by Mr. Macdonald	926
Re-Cross-Examination	by Mr. Meurin	926
ROBERT EARL SIMS		
Examination	by Mr. Peacock	927
Cross-Examination	by Mr. Stilwell	932
Cross-Examination	by Mr. Meurin	933
WILLIAM AUSTIN KEMP		
Examination	by Mr. Peacock	935
Cross-Examination	by Mr. Stilwell	946
Cross-Examination	by Mr. Macdonald	950
Cross-Examination	by Mr. Meurin	952
Re-Examination	by Mr. Peacock	953
WALLACE JOHNSTON GRAHAM		
Examination	by Mr. Peacock	954
Cross-Examination	by Mr. Stilwell	957
Cross-Examination	by Mr. Meurin	958
Examination	by The Commissioner ...	958
Re-Examination	by Mr. Peacock	959
WALTER JAMES CATER		
Examination	by Mr. Peacock	962
Examination	by The Commissioner ...	964
JOHN SCHLEGEL		
Examination	by Mr. Peacock	964
Examination	by Mr. Wilkins	967
Examination	by Mr. Macdonald	968
Examination	by The Commissioner ...	975
BRIAN DALE NURSE		
Examination	by Mr. Peacock	977

I N D E X (Cont'd)

Examination	by Mr. Wilkins	986
Examination	by Mr. Macdonald	992
Examination	by Mr. Meurin	995
Examination	by The Commissioner ...	1005
Re-Examination	by Mr. Wilkins	1006
WALTER JAMES CATER		
Examination	by Mr. Peacock	1008
Cross-Examination	by Mr. Meurin	1019
Cross-Examination	by Mr. Macdonald	1022
Cross-Examination	by Mr. Meurin.....	1035
Examination	by The Commissioner.....	1036
Re-Examination	by Mr. Peacock	1037
Cross-Examination	by Mr. Wilkins	1038
Cross-Examination	by Mr. Macdonald.....	1038
GARRY VERN RAMCHUK		
Examination	by Mr. Peacock	1039
Cross-Examination	by Mr. Wilkins	1044
Cross-Examination	by Mr. Macdonald.....	1049
Cross-Examination	by Mr. Meurin	1051
Examination	by The Commissioner.....	1052
GUNTHER CORDES		
Examination	by Mr. Peacock.....	1052
Cross-Examination	by Mr. Wilkins.....	1057
Cross-Examination	by Mr. Meurin	1058
Re-Examination	by Mr. Peacock.....	1060
DOUGLAS HAROLD PETRIE		
Examination	by Mr. Peacock.....	1061
Cross-Examination	by Mr. Wilkins.....	1065
Cross-Examination	by Mr. Macdonald.....	1066
WILLIAM AUSTIN KEMP		
Examination	by Mr. Peacock.....	1067
Cross-Examination	by Mr. Wilkins.....	1072
STEVEN ROTTENBUCHER		
Examination	by Mr. Peacock.....	1076
Cross-Examination	by Mr. Wilkins.....	1080
Cross-Examination	by Mr. Meurin	1081
DONALD EDWARD MADSEN		
Examination	by Mr. Peacock.....	1082
Cross-Examination	by Mr. Meurin	1085

DEPOSITIONS TAKEN AT 10:00 A.M. OCTOBER 22, 1973

MR. PEACOCK: Mr. Commissioner, Mr. Stilwell apparently has been held up in the north country on a business trip and apparently has contacted all concerned to advise he won't be here until approximately noon today.

THE COMMISSIONER: Yes, I was in contact with Mr. Stilwell at Frobisher Bay. I understand his flight is fogged down and the matter therefore stands adjourned until two P.M. this afternoon.

DEPOSITIONS TAKEN AT 2:00 P.M. OCTOBER 22, 1973

MR. PEACOCK: Mr. Commissioner, we are proceeding on with the incident. We have just heard testimony from the personnel from the Institute that were involved in this incident involving inmates Rocheleau and Harwig.

THE COMMISSIONER: Right.

MR. PEACOCK: And you heard last from Mr. Rocheleau who was called a week ago Friday. I would like to call Mr. John Harwig, please.

Reswear the witness, please.

JOHN BERNARD HARWIG, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Harwig, you were an inmate at the Calgary Correctional Institute on June 23rd, 1973?

A Umhm.

DEPOSITIONS TAKEN AT 10:00 A.M. OCTOBER 22, 1973

MR. PEACOCK: Mr. Commissioner, Mr. Stilwell apparently has been held up in the north country on a business trip and apparently has contacted all concerned to advise he won't be here until approximately noon today.

THE COMMISSIONER: Yes, I was in contact with Mr. Stilwell at Frobisher Bay. I understand his flight is fogged down and the matter therefore stands adjourned until two P.M. this afternoon.

DEPOSITIONS TAKEN AT 2:00 P.M. OCTOBER 22, 1973

MR. PEACOCK: Mr. Commissioner, we are proceeding on with the incident. We have just heard testimony from the personnel from the Institute that were involved in this incident involving Inmates Rochelero and Mervig.

THE COMMISSIONER: Right.

MR. PEACOCK: And you heard last from Mr. Rochelero who was called a week ago Friday. I would like to call Mr. John Darvig, please.

Beswarr the witness, please.

JOHN EDWARD DARVIG, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Darvig, you were an inmate at the Calgary Correctional Institute on June 22nd, 1973?

A Umhm.

Q And you were I understand placed in solitary that day or the day before, is that right?

A Yeah, on the 23rd.

Q And what were you put in there for?

A Refusing to work.

Q I see. And solitary is the, what we could call the basement floor of the "C" Range in the cell block?

A Yes.

Q And do you know how many cells are in that area?

A There's twelve. There's six on one side and six on the other side but they don't use six. They just use the six on the one side.

Q Well, the ones that they use, the six that they use, would they be on the right hand side as you go in the door?

A Yes.

Q What cell were you in?

A Four.

Q Four. Now, is that two from the far end or two from the door?

A Two from the far end.

Q I see. Who was in the farthest cell? Do you recall at that time?

A I think Wallace was. I think his name is Wallace.

Q Who was next to you closest to the door?

A Eric Buettner.

Digitized by the Internet Archive
in 2026 with funding from
University of Alberta Library

https://archive.org/details/ableg_33398002050739

Q Then next to him?

A Me. Oh, just a sec, I am running it down from the wrong end.

Q Well, let's start from the far end and move out towards the door.

A Yes, that's what I am doing. There's Wallace and then Buettner then me. Al Jensen and Rocheleau and Sims I think.

Q I see. All of the cells were filled as far as you knew?

A Yeah, they were all filled.

Q Each of you had your own cell?

A Yeah.

Q You were put in there on the 23rd?

A Umhm.

Q What time, do you recall?

A Uh, about one o'clock.

Q And that night, did you get involved in some noise making down there?

A No, it was the next day.

Q I see, on the 24th. What happened?

A Well, I got called up for a visit about, oh, 2:15, 2:30. I went up. I had my visit. When I came back the rest of the guys downstairs were making noise.

Q What kind of noise were they making?

A Oh, just banging against the door.

Q They would be banging the door with something or would they just be shaking the door itself?

A I think they were shaking the door or kicking it or something. I don't know. I wasn't -- so I got relocked up in my cell and as the guards were locking me up the noise stopped and then as soon as the guards went, then the noise started up again.

Q Did you get involved in the noise making at that time?

A I kicked the door about three times.

Q I see.

A And then I -- well, you see I snuck -- smuggled, I snuck some tobacco and that in with me so I didn't want to cause any heat upon myself you know because --

Q You weren't supposed to have tobacco in the --

A No.

Q In the cells, is that correct?

A That's right.

Q And you brought some down after you visit?

A Yeah.

Q All right. Tell us what happened after you got locked in your cell and the guards left?

A Uh--the noise was going on and I told Al Jensen next to me that I had some tobacco and I told him to dummy the noise because the guards were going to come down again. But the noise kept on going. And Jensen asked me if I could shoot him a cigarette over. I said "Yeah, okay". I said make a piece of string up and

tie a button to it and throw it across to my door and I will tie a cigarette and a match on. So he said "Okay", and so he was doing that. It took him about ten tries and he finally had it pretty close so I grabbed my Bible and I put it underneath the door. And just when I did that, I heard the door outside open. So I pulled out the Bible and ran over to my bed and sat down and pretended I was reading it.

Q All right. Now, I take it you were using your Bible to endeavour to get the string with the button on so you could tie a cigarette to it for Jensen to get it into his cell?

A Yes.

Q All right. When you heard the guards you jumped into bed and pretended you were reading your Bible?

A Umhm.

Q What happened?

A Well, I heard a little talking outside which I couldn't hear what was said. And the next thing I know my cell door is open and Mr. Schlegel stands there for a second. I am laying on my bed pretending I am reading the Bible still. And you see, I have had a little to do with Mr. Schlegel and I always thought he was a good guy, you know, nothing -- nothing to be scared of with Mr. Schlegel, you know what I mean.

THE COMMISSIONER: Pardon?

A He was a pretty fair guy you know. I wasn't worried when I seen him, you know. I didn't think anything was going to happen. So I kind of relaxed. And I looked at him and that and before I knew it he was on top of me.

Q And this was on your bed?

A Yeah.

Q Did anybody come into the cell with him?

A Yeah, there was Mr. George. He was right behind him and there was two other guards, I don't know.

Q All right.

A I don't know their name.

Q They came right into the cell?

A Yeah.

Q Did they say anything to you before they came in?

A No.

Q What happened?

A Well, when Mr. Schlegel, he came in first. He kind of charged in and he sat on top of my chest and he grabbed my neck and grabbed my left arm. And said something like "Who do you punks think you are". And before he said that, as he was coming in he I says "What's going on? What's happening?" Then as he sat on top of me he says "Who do you punks think you are". I says "Hey, what are you doing?". He says

"I will show you who you are". And well, he was on top of me for a while. He was twisting my arm. He was squeezing me around the neck. And after a couple, I just kind of laid there and relaxed and tried to show these guys I wasn't, you know, going to do anything. So they got up and they said "Get up" and I got up and they pushed me out of the cell. And then they told me to stand there and one guard stood right next to me making sure I didn't go anywhere and they opened up Rocheleau's cell.

Q Do you know who the guard was who stood beside you after you got out of your cell?

A No, he was one of the guards I don't know.

Q Were you struck by Schlegel or George in your cell?

A I was -- all Mr. Schlegel did to me was squeeze me around the neck and twist my arm.

Q I see.

A I had marks around my neck the next day from where he squeezed me, you know.

Q Where were the marks?

A Right around my neck like that.

Q Did he squeeze your neck with his hands?

A Yes.

Q Did you seek medical attention for any of the marks that were on your neck as a result of that?

A No, they weren't -- they weren't serious enough

to seek medical attention.

Q What did these marks look like?

A Oh, like when somebody gets squeezed hard and you kind of get that little red bruises, you know what I mean.

Q I see.

A Yeah.

Q You were then told to stand outside your cell, and who were you standing with then? You don't know the guard's name?

A No, just one guard and they opened up Rocheleau's cell and went in. And I heard a struggle and I heard Rocheleau say something like "I didn't do anything. What are you doing? What are you doing with me for? I didn't do anything.".

Q Did you see what they were doing to him?

A No, I was -- I was -- all I could see was the guards' backs and they were kind of like that. I could see a bunch of activity but I couldn't see anything you know, in detail.

Q I see. There's no question in your mind that in both cases Schlegel and George entered your cell and entered Rocheleau's cell?

A No, there's no question in my mind.

Q All right. And what happened? Did they bring Rocheleau out of his cell?

A Yeah, after about a minute.

Q And what happened?

A Well, he got pushed out of the cell. He came flying out of the cell and I was just standing there, and he came over next to me and they said "All right, move". And I said "Well, I don't know, where are we going?" He said "Don't ask questions, just move" and he pushed me.

Q Who was that?

A Mr. Schlegel.

Q Were you ahead of Rocheleau or behind him?

A At that point I was behind him I think. Okay. We both -- we both went down the hallway. And then I kind of stood at the basement of the stairs. Like there's a set of stairs going up. I didn't know where they were taking me or anything, you know. "And where are we going?", you know. "Don't ask questions, just move". And they pushed me again up the stairs and Rocheleau was getting pushed. Then there's a door and it's run electrically so we had to wait for that door to open. And then we were out in the main corridor and I just kind of stood again because I still didn't know where we were going and I was pushed again.

Q By whom?

A By Mr. Schlegel again. He says "Keep moving". Then I was turning around like this, turned my head around.

I was going to say "Where are we going?". He says "Don't turn around, just do as you are told". And so I quickened up my pace, you know, because I didn't want, you know, I wasn't looking for any trouble or anything so I just kept walking. And Rocheleau was about two steps behind me and I kind of looked like that and I seen -- I seen him turn around. I don't know -- I don't know what he was going to do or anything but he stopped and he turned around and there was just all four of them on him and this was right about in front of the barber shop.

Q All right. So you ended up ahead of Mr. Rocheleau after you got out of the door of the cell block?

A Yeah.

Q And you started down the hall?

A Umhm.

Q And at this stage, Mr. Schlegel was behind you. Was he pushing you?

A Yeah, he pushed me about four or five times.

Q I see. Was there another guard with you?

A Yeah, there was still -- all four guards were there.

Q I see.

A I didn't --

Q Were all four guards with you or with Rocheleau?

A Well, we were altogether. I was like only maybe two paces ahead by this time.

Q And then you saw Rocheleau turn around. And then what did you see?

A Then I seen just two guards grabbed him, the two guards that I didn't know and he kind of tried to shake free and he kind of did. But then he was, you know, there was just a pile is what I would call it, you know.

Q So they were scuffling in the hallway?

A Yeah.

Q How many guards?

A All four of them.

Q There wasn't a guard left standing beside you?

A No, I was -- I turned around and I looked and I seen what was going on and I thought "Well, I have got to do something about this". So I thought -- I -- I didn't realize it was a weekend, a Sunday so I thought the barber shop was open. So I ran to the barber shop and it was locked and I thought "Oh, yeah, it's a Sunday". There was nobody around. I looked in the gym and there was nobody there because I wanted to get people, you know, to see what was going on. But I couldn't find anybody and by this time there was a fifth guard. And I was -- I was about half way down the hallway by then and he come up to me and he says "Let's go".

Q All right. You are saying today that there wasn't

a guard accompanying you alone, and the other three guards accompanying Rocheleau down the hall?

A No.

Q Did you have a conversation with this fifth guard about what was going on there?

A Yeah. He said "Come with me" and I says "Well, lookit dad, I can't just leave that guy like that alone, you know, all four guards like that". And he says "I know son". And I says "-- no", then he said "But you have got to look after yourself first" or something to that effect. He said "You'd better come with me. You have got to look after yourself first".

Q And you are sure that was a fifth guard?

A Yeah.

Q That wasn't one of the guards who was down in the cell block when you were brought out of your cell?

A No, that was the fifth guard. He came from the guard room.

Q Do you recall anything about him, his appearance or anything?

A He's got white hair.

Q Does he speak with an accent?

A I think so.

Q Do you remember what kind of an accent?

A I think it was a Scottish accent.

Q Now, when you saw this scuffle going on between the guards and Rocheleau, what kind of a scuffle was it? Were they holding him? Were they hitting him? What were they doing?

A Well, they were hitting him and holding him all at the same time.

Q Was he hitting them?

A No, because his arms were pinned.

Q I see. Did they get him down on the floor?

A No.

Q Did you observe that?

A No, not while I was there.

Q I see.

A He was kind of pinned up against the wall and there was one guard on each side of him holding his hands or his arms.

Q Did you see him struck?

A Yeah, I seen him struck.

Q By whom?

A By Mr. Schlegel and I seen Mr. George strike him too.

Q I see. Mr. George was involved in this scuffle, was he?

A Yeah.

Q When this other white-haired guard told you to look after yourself, did you then go with him down to the solitary or --

A Yeah, I went with him.

Q -- the segregation area?

A I went with him, yeah.

Q And you left them scuffling in the hall?

A Yeah.

Q All right. What happened next?

A Well, I was down -- they took me down to segregation, that one guard took me down to segregation. I was down there for about three to four minutes and from that cell you could hear, about three minutes later you started hearing a little yelling and screaming, you know. Then -- then they were at the cell and they threw him in.

Q Who?

A Rocheleau, they threw him in a cell.

Q Okay.

A But down in segregation, there's three cells -- four cells I think there is and they are kind of offset to each other. I got put way down at the end so I couldn't see anything from there. All I could do was hear it. And they threw him in and John, that's John Kemp, he said something. I heard him say something.

Q Do you remember what he said?

A No, I didn't hear what he said. I just heard him say something but I heard Mr. Schlegel, he turned

around and he said "Don't tell me to fuck off. Who are you telling to fuck off". And then he -- then he turned around and said to a guard "Open that cell". And you could hear the cell open. Then you could hear another scuffle. Then the cell closed and then Mr. Cater, I don't know when he came down there or how long he was down there but he came down to my cell and he says to me, he says "Another peep from you Harwig and I will come down and see to you personally".

Q All right. I take it that you didn't utter another peep that night?

A Not really, no.

Q Mr. Cater didn't come back during that night?

A No.

Q Anything else that you can recall of that night that you wish to tell the Commission?

A I think that's just about all -- all that I can really say that I was personally involved in.

MR. PEACOCK: All right. Answer other

A counsel please.

CROSS-EXAMINATION BY MR. STILWELL:

Q What is the sentence that you are now serving?

A A year.

Q For what?

A B & E.

Q On the 9th of November, 1970 you were convicted I suggest of the following things: two charges of break and enter, one of theft, one of attempted break and enter, one of damage, one of possession of stolen property and another of theft over. Seven charges in all, is that correct?

A That sounds right.

Q On the 9th of June, 1972, possession of a narcotic. You got three months. Is your answer yes?

A Yeah, that's right.

Q On the 16th of June, 1972, theft under, you got a month concurrent?

A Yeah.

Q 17th of October, 1972, six months for theft?

A Umhm.

Q Is that your record of convictions?

A Yes.

Q You were in fact addicted to heroin at that time, were you not?

A Yeah.

Q And prior to becoming addicted to heroin you had experimented with a great number of other drugs, had you not?

A Umhm.

Q You have been convicted of violations of the prison rules from time to time, have you not?

A A few minor rules, yes.

Q For example, you were in a camp and you were taken out of a camp, weren't you, for refusing to work or refusing to cooperate?

A No, it wasn't for refusing to work.

Q What was it for?

A I was lying in my bed. It was Wednesday afternoon and you get the afternoon off because the camp truck comes in and they ring a bell when the truck is in there and everybody is supposed to go unload the truck. And I didn't hear the bell. I was lying on my bed reading and I got run for that. It was not -- not refusing to work.

Q Are you saying you were taken out of the camp just for that reason?

A Pardon me?

Q Are you saying you were taken out of camp just for that reason?

A Well, there was another incident about two weeks -- well, just about a week after I had been out at camp. We were out at the old campsite. Like the camp I was in was a new one and the old one we had to clear it you know, because it was in Banff National Park. We were clearing it to make, I don't know what they were doing with it but anyway me and this, the guy that I used to work with all the

time, we -- we done all we were told to do so we walked over to the guard and we said "We are finished. What else is there to do?". And he turned around and he said jokingly, he said "You guys haven't done fuck-all all morning". Then I said "What do you mean, fuck-all?" And he thought I was telling him to fuck off. It was just a misunderstanding.

Q Were you charged with a violation of prison regulations as recently as ten days ago?

A Yeah, I was.

Q Were you convicted on those?

A In my own mind I wasn't convicted, no.

Q Were you found guilty?

A I suppose I was found guilty, yeah.

Q What do you mean you "suppose you were found guilty"? Were you found guilty or weren't you?

A Yeah, I was found guilty.

Q Your evidence is that you didn't get up and walk out of your cell yourself?

A Yeah, I got -- I got up myself. I walked out myself but I was pushed out also.

Q When the door was open?

A When the door was open.

Q Did Mr. Schlegel come into your cell?

A Yes.

Q You are sure of that?

A Yes.

Q You are absolutely certain of that?

A Beyond any possible shadow of a doubt.

Q I'm sorry?

A I said beyond any possible shadow of a doubt.

Q Beyond a reasonable doubt?

A Right.

Q And you say that having taken the testament in your hand and invoked the Lord's name?

A Yeah. The Lord can strike me down if I am lying.

Q Well, I certainly hope he does but unfortunately those things don't happen very often in real life. At any rate, there's no question in your mind about that?

A No question.

Q He came into the cell and attacked you in the cell?

A Right.

Q Do you know who actually unlocked the door?

A No. It appeared to be Mr. Schlegel but I don't know. I think it might have been one guard opening it like that. I think the door opens this way. No, that way. It opens that way and he was kind of, came in from that direction so it could have been another guard opening the door.

Q Did you see Mr. Anderson there?

A I don't know -- I don't know who Mr. Anderson is.

Maybe if I knew who Mr. Anderson was I could tell you if I seen him.

Q Do you know whether your cell was opened before Rocheleau's or after?

A Before. Mine was the first one open.

Q And did you see anything happening with Rocheleau while the business was going on with you?

A No, he -- he -- nothing was happening to Rocheleau while anything was happening to me.

Q He just got up and walked out of his cell, did he?

A No. They -- they got me. They put me out in the hallway. Then they opened his cell and went into his cell.

Q Were you standing in the hall when they opened his?

A Yeah.

MR. STILWELL: Those are all the questions. Thank you.

CROSS-EXAMINATION BY MR. MACDONALD:

Q You said that you have always been treated fairly by Mr. Schlegel, is that correct?

A Umhm.

Q Do you hope to see Mr. Schlegel punished as a result of this?

A I don't hope anything. I'm just telling you what happened and let you guys decide.

Q Have you any convictions for fraud?

A No.

Q Or perjury?

A No.

Q Have you ever lied under oath before?

A No.

Q Are you lying today?

A No.

MR. MACDONALD: That's all, thank you.

THE COMMISSIONER: Mr. Meurin.

CROSS-EXAMINATION BY MR. MEURIN:

Q Sir, did you ever get stoned on any kind of drugs in prison?

A Yeah.

Q What?

A Hash.

Q What about --

MR. MACDONALD: Well, again --

THE COMMISSIONER: Just a minute, Mr. Meurin.

MR. MACDONALD: -- if we are going to ask about things that may well constitute offences under the Criminal Code or the Narcotic Control Act, I believe Mr. Scott the last time we were here requested that there be rulings with respect to self-incrimination and we would ask for the protection of the Canada Evidence Act.

MR. MEURIN: I don't intend to pursue that line if that's any consolation to my learned friend, sir.

THE COMMISSIONER: If you do, perhaps you would let me know, Mr. Meurin.

MR. MEURIN: Yes, I will, sir.

Q Now, you have mentioned hash. Were you ever stoned on any other drugs?

A No.

Q Of any sort?

A Yeah, I smoked a joint of marijuana too.

Q No, what about say medicine or anything like that?

A Oh, yeah. Yeah, I don't know what they were, just tranquilizers or something, tranquilizers. I used them for a while.

Q You used to get medication?

A Yes.

Q While you were in gaol?

A Umhm.

Q This was from one of the doctors?

A Yeah.

Q And you are supposed to take those right away when you get them?

A Yeah.

Q And you would conceal them? You wouldn't take them?

A No, I just put them in my mouth and took them out afterwards.

Q Take them out afterwards and save them up?

A Yeah.

Q That's against the rules too, isn't it?

A Only if you get caught.

Q Only if you get caught. I see. So really you don't care what the rules are as long as you don't get caught?

A No.

Q I take it?

A No, that's not true.

Q It's not true?

A No.

Q Well then, why did you do it?

A Because that's -- that's one of my interests is drugs.

Q An interest?

A Yeah.

Q Medically no doubt?

A No doubt.

Q Sir, after you had been taken out of the cells below the cell block and placed in the segregation cells below the guard room, you said that you had marks on your neck?

A Umhm.

Q Is there a mirror in your cell?

A Yeah.

Q There was. Which cell were you in?

A The second one from the end. There's a mirror in all the cells.

Q Sir, you have indicated that you have told the truth here today?

A Umhm.

Q I believe you wrote the Ombudsman?

A Yes.

Q After this incident?

A Yeah.

Q Did you tell him the same story?

A Yeah.

Q You are aware of course that the mail to and from the Ombudsman goes in and out of the prison uncensored?

A Yeah.

Q And you are also aware that whatever you tell him is in confidence?

A Yeah.

Q Would you be willing to make available to this Inquiry a copy of the letter that you wrote to the Ombudsman in order that we might see whether or not your story is in fact the same?

A Yeah, you can -- you can check with any letters you want. I think the first letter I wrote he misunderstood and when I got the reply it was a carbon copy reply of four other letters.

Q I see.

A And I wrote back.

Q He might have misunderstood you in the same way that the guard misunderstood you in the Banff Park, is that right?

A In Banff Park?

Q Yes. You said that the guard thought that you were telling him to f off or something like that?

A Oh.

Q And it was just a simple misunderstanding?

A Yeah, that's right. No, he just misinterpreted the letter, that's all.

MR. MEURIN: I see. No further questions.

A Because I was talking about two incidents in that letter.

THE COMMISSIONER: Mr. Macdonald, the questions that I propose to ask this witness, he may very well seek the protection of the Canada Evidence Act. And perhaps first, if I put the question to him, if he declines to answer you might advise me and I can then order him to answer and he will automatically invoke the protection of the Canada Evidence Act. Do I make myself clear?

MR. MACDONALD: I think I understand. I hope he understands.

A Yeah, I understand.

MR. MACDONALD: In other words --

THE COMMISSIONER: We understand each other.

MR. MACDONALD: With your experience, I'll bow.

EXAMINATION BY THE COMMISSIONER:

Q Witness, if you decline to answer just advise me.

A Umhm.

Q Then I will order you to answer and you will automatically get the Act. Do you understand that?

A Yeah.

MR. MACDONALD: Mr. Commissioner, I wonder if just to be safe, we could explain to the prisoner --

A No, I know exactly what's happening.

THE COMMISSIONER: I think he does, Mr. Macdonald. Let's just try it anyway. If he declines to answer and I order him to answer, and he does answer, clearly he understands. In other words, you can't answer the first time if you want the protection of the Act.

A Right.

Q Now, sir, were you on any drugs at the time of this incident that you have related to us when Mr. Schlegel came into the cell?

A Yeah, I was.

Q What was it?

A Medication from the psychiatrist.

Q Yes. Do you recall the name of that drug?

A No, I was never told the name. There was two -- two kinds.

Q Two kinds. Now, answer this for the moment. Had you saved any of it up or --

A Not right then, no.

Q But you had before?

A Yeah.

Q How much had you saved up?

A Just a day.

Q Would it be valium or librium that you were on?

A No, it's not valium or librium. I don't know what they were. One was orange and one was white. I only had half -- a whole orange and half a white. I don't know what they were.

Q I see. What they were we don't know.

A They might have been placebo. I don't know.

Q And would it be fair to say that you had a fairly good jag on at that time?

A Like that -- that day?

Q Yes.

A No, no. It was, you see -- it was -- oh, just a second. I am getting a little confused here. I think -- I wasn't on medication then.

Q I see.

A I am pretty sure I wasn't.

Q Umhm.

A But I will ask the protection under the Canadian

Evidence Act.

Q You decline to answer and I will order you to answer.

A Okay, right.

Q Okay?

A I'm not sure if I was under medication. In my -- in my mind I don't think I was on medication at that time. I think I was on medication on the June -- July 17th, I was on medication then for sure because that -- the night after that whistling incident in the morning I was woke up at six o'clock and told to go down to the guard room to get my medication. And I was down at the guard room and Mr. Schlegel and these four other guys they took me right -- right to the cell.

Q Were you on any drugs, be it medication or not at the time of the incident you have told us about?

A No.

Q Pardon?

A No, I wasn't.

Q You weren't at that time?

A No.

Q Had you been on any drugs before?

A No.

THE COMMISSIONER: Thank you very much.

A That's it?

THE COMMISSIONER: Unless some of these gentle-

men have questions. Mr. Macdonald?

RE-CROSS-EXAMINATION BY MR. MACDONALD:

Q Was there anything wrong with your eyesight? Could you see?

A No, my eyesight was 20/20.

Q Did you see violence used yourself on Rocheleau?

A Yeah.

Q Was there any reason to doubt that your mind was not working properly at that time?

A No.

Q What you have told us here today, can you think of any reason why it might not be the truth?

A No reason at all.

Q Is it the truth?

A Yeah, it is the truth.

RE-CROSS-EXAMINATION BY MR. MEURIN:

Q Sir, up to this point you have mentioned taking heroin, hashish and marijuana and I would assume from your testimony that at one time or other this occurred while you were in custody in the prison, is that correct?

A Can you explain that question again?

Q In other words you have taken hash or marijuana or --

A Yeah, I have admitted that already.

Q Yes. Now, at no time have you ever seen any of the guards or prison staff either condone or encourage --

A No.

Q -- this kind of stuff?

A Never.

Q In other words, you have always had to be very secretive about it?

A For sure.

Q And in actual fact, there has been searches taken of your cell and whatnot?

A Yeah.

Q From time to time for drugs?

A There's very little drugs in the Institution.

Q Very little?

A Very little at all.

MR. MEURIN: Okay. No further questions.

THE COMMISSIONER: Thank you very much.

MR. PEACOCK: Thank you, Mr. Harwig.

(Witness retires)

MR. PEACOCK: Would you call Robert Sims, please.

ROBERT EARL SIMS, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Sims, you were an inmate at the Calgary Correctional Institute on June 24th, 1973?

A Yes.

Q And on that date I believe that was your birthday, was it. How old were you that day?

A 17.

Q And where did you celebrate your birthday that day?

A Uh, in the segregation cells.

Q I see. Had you been put on charge and put into the segregation cells?

A Yes.

Q Now, were you in the segregation cells or the meditation cells? Do you know the difference?

A No, I don't.

Q Were you in the cells under the guard room or were you in the cells below the cell block?

A Below the cell block.

Q I see. Commonly referred to as the hole?

A Yes.

Q What were you in there for?

A Refusing to work.

Q And when had you been placed in the hole for refusing to work?

A June 22nd.

Q I see. So you had been there a couple of days?

A Yes.

Q And on June 24th, I gather there was some noise errupted down there. You fellows were making some noise, is that correct?

A Yes, it is.

Q Were you involved in the noise making?

A Yes, I was.

Q What were you making noise with?

A Just kicking the doors.

Q I see. And were the other inmates in the hole at that time kicking their cell doors as well?

A Yes, they were.

Q Do you know how long this kicking of cell doors went on?

A Oh, about half an hour.

Q And why were you doing this?

A You get all pent up after a few days downstairs and just to release steam I guess. No particular reason.

Q I see. Something to do?

A Yeah.

Q So you kicked your door and the other inmates in the cell block or in the hole at that time were kicking their cell doors?

A As far as I knew, yes.

Q Tell us what happened?

A Well, we had been kicking our doors for a while and John Harwig came back from his visit and we all stopped because the key came in the door so we quieted down. And then about five minutes later the guards -- well, someone came in the "C" Range down the other side from where I was and opened two cells. And I guess

they just took the two guys out and threw them down, down beside my cell. Took them out to the segregation.

Q Were you in the first cell as you come in the door?

A Yes.

Q To that range?

A Yes.

Q Who was next to you?

A I'm not sure but I think it was Wallace.

Q I see. And then Rocheleau and Harwig were farther down, were they?

A Yes.

Q And you heard the guards come in. You heard the door, the key click when they brought Harwig back and the noise quit?

A Yes.

Q Then when they went away it started again?

A Yes.

Q And ultimately some guards came down?

A Right.

Q And did you observe any of the guards striking either of these two inmates?

A Well, I saw one guard push Rocheleau by and then -- then I saw John Harwig get pushed by my cell. And then John Schlegel and Norman George walked by, the two guards.

Q I see. Who came by your cell first, was it Harwig

or Rocheleau?

A Rocheleau.

Q I see. So Harwig followed him along?

A Yes.

Q Did you hear anybody getting hit?

A I heard stuff like "Don't hit me, I didn't do it". And I heard -- well, you can't really tell you know but it sounded like someone was getting a licking.

Q But you didn't observe that?

A No, I can't see.

Q You don't know who was getting a licking?

A Well, from what I gather it was John Harwig and Rocheleau.

Q Why did you gather that?

A Because they were the ones who were pushed by and they were the ones yelling "Don't hit me, I didn't do anything".

Q All right. When they got by and they went upstairs, did the cell block quieten down or did you continue to make more noise?

A Yeah, we quieted down.

Q I see. Tell me, as a matter of interest Mr. Sims, what did you expect could be done to you for making noise in the hole like that?

A I didn't know.

Q Have you ever been sentenced to any punishment there

besides being put in the hole?

A Yes.

Q What?

A Off privileges, ten days off privileges.

Q I see. Did you anticipate that anything would be done by the guards when you were downstairs kicking your cell in that cell block that night?

A I don't know for sure. I couldn't -- I don't -- I don't know what I was expecting.

MR. PEACOCK: All right. Answer the other counsel please.

CROSS-EXAMINATION BY MR. STILWELL:

Q Would you look at Exhibit 23, please. Is that a picture of the place where you were held at this time?

A Yes, it is.

Q Can you hold it up and show the Commissioner which cell you think you were in.

A This one here, the first one on this side, I believe but it looks the same from both sides.

THE COMMISSIONER: Yes.

A And the door is on this side so it's either this one or this one down here.

Q Are you pointing to the left side of the picture?

THE COMMISSIONER: He's pointing to his left, Mr. Stilwell.

A Oh, no, no. Yes, I see, I see. That's the dark side. I was on this side.

THE COMMISSIONER: Which would be the side to the right of the picture?

A Yes.

THE COMMISSIONER: Right of Exhibit 23.

MR. STILWELL: Do you know which one it was?

A I was in number 1 but I can't -- 1, 2, 3, it looks like there's only four here.

Q Now, right at the top right hand side of the picture, you see the grill?

A Yes.

Q Peep hole?

A Yes.

Q Is that what you had to see through?

A Yes, it is.

Q And everything that you saw which you have described today you saw through either that grill or one just like it?

A Yes.

MR. STILWELL: That's all, thank you.

MR. MACDONALD: I have no questions.

THE COMMISSIONER: Mr. Meurin?

CROSS-EXAMINATION BY MR. MEURIN:

Q Sir, this is the second time you have testified

in this Inquiry?

A Yes, it is.

Q And I believe on the first occasion you gave an indication of what sentences you are presently serving, is that correct?

A Yes, I did.

Q And I am reading from the transcript here. "What charge are you in for at the present time? Five B & E, threatening to kill forcibly, possession of dangerous weapons and escaping". Sir, I take it then that when these offences were committed you were already in custody?

A When those offences were committed?

Q Yes. In other words, you escaped from gaol?

A No, no, no.

Q And then committed --

A I did all -- everything but the escape in January. Then I escaped in January five days after this happened.

Q I see.

A June 29th.

Q Sir, is it true that you changed your testimony on the previous occasion in which you testified?

A Yes, it is.

Q And at one time you said that you didn't know of a knifebeing in the prison on the July 17th incident.

Then you changed it to say you did know?

A No. I changed it to say that I wasn't sure because I could have heard it that there was a knife in the wing.

MR. MEURIN: I have no further questions.

THE COMMISSIONER: Thank you very much.

(Witness retires)

MR. PEACOCK: Could we have a five minute recess.

(Adjournment)

(Reconvening)

MR. PEACOCK: Call William Kemp, please.

WILLIAM AUSTIN KEMP, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Kemp, you are presently incarcerated at the Calgary Correctional Institute, is that correct?

A Yes.

Q You were there on the 24th of June, 1973?

A Yes.

Q At that time were you in the area known as the segregation cells?

A Yes, I was.

Q And those were the cells below the guard room, is that correct?

A Yes.

Q How long had you been down there?

A Uh, I'm not sure but I think that was the first night we went down.

Q I see. Did you go down in the company of somebody else when you were placed there?

A Yes, I did.

Q Who?

A Wallace Graham and Gunther Cordes.

Q Were you on charge? Is that the reason you were down there?

A Yes.

Q What were the charges against you at the time?

A Creating a disturbance.

Q And could you just describe the cells for me. Are these cells separated by bars or by a wall?

A There's a wall in between each cell.

Q I see. And then the front of the cells is a bar gate, is that correct?

A Yes.

Q And were you in a cell by yourself?

A Yes.

Q Who was in the cell next to you, do you know?

A At the time, nobody.

Q I see. And was there somebody in the cell on the other side of you?

A No, I was in the first cell against the wall.

Q And there was nobody next to you?

A No, but Wally Graham was the third -- the second cell down.

Q So there was an empty cell between you and Wallace Graham?

A Yes.

THE COMMISSIONER: Could the witness be shown an exhibit.

MR. PEACOCK: Show the witness Exhibit 27, please.

Q Is that a picture of the cell block that you were in at that time?

A That's part of it but I wasn't in that part.

Q Do you know if, as far as the inmates are concerned, did they call a portion of that cell block the women's segregation cells?

A Yes, the new cells.

Q Were you in the women's part?

A The new cells.

Q Let's show the witness Exhibit 23, please. I'm sorry, Exhibit 26. What did I ask you to be shown the last time?

A 27.

Q Exhibit 26. Now, is that the cell area that you were in?

A No. There's only three cells in the area I was in.

Q All right. Let's see if we can find it. Exhibit 24,

does that look familiar?

A No, no. That's not it either. It's like, as soon as you come in the door there's an office there. It's right in front of the office.

Q Mr. Kemp, could you take a look at this Exhibit #42. Do you recognize that as a floor plan of the segregation cells that you were in at that time?

A Where's the guard room? I can't make it out as that because --

Q We have shown you pictures and the pictures we have shown you, you don't recognize the cell block where these cells that we were showing you?

A No.

Q Commissioner, I understand that the pictures that we have stop short of the cells that we are talking about which may be the reason that I wasn't able to find a picture. Now, as you go into this area, were the cells that you were in when you were going into the area on the right or the left hand side of the hallway?

A Where, at the bottom of the stairs?

Q Yes.

A To the left.

Q I see. And how many cells are there along that bank?

A Three.

Q And what's on the right hand side?

A There's another row of cells.

Q And are there three over there as well?

A No.

Q How many are there, do you know?

A I don't know, about six, seven.

Q I see. Are there cells backing onto the cells that you were in that night?

A I don't know. I have never been over the other side.

Q I see. So when you come in there, there's three cells on the left. Then there's approximately six cells across the hallway?

A Yes, and there's another little hall and there's another row.

Q All right. Now, in this area where you were going in the door, you were in the first cell?

A The first cell against the wall, the farthest to the left.

Q The farthest to the left. All right. So the one next to the wall had Mr. Graham in it?

A No, he was next to the aisle, the hallway. He was directly in front of the door.

Q I see. And there was a cell separating you and Mr. Graham?

A Right.

Q All right. What happened that night?

A Uh, that was the night that Fred Rocheleau and John Harwig were brought down by the guards. I didn't see too much when they came in. I just heard a lot of yelling and screaming and they put Rocheleau right in between me and Graham. And then they put Harwig over the other side. And it was at that time -- I didn't hear this but I was told that it was -- well, maybe I shouldn't say it if I didn't hear it.

Q Just tell us what you can recall observing and hearing.

A Cater went over to Graham and he told him to keep his mouth shut or he would get some of the same because I guess they were treating the guys kind of bodily and that.

Q Did you observe them treating the guys bodily?

A I couldn't see.

Q Did they pass your cell with Rocheleau when they put him in his?

A No.

Q Did they pass your cell with Harwig?

A No.

Q So all that you saw was what you heard?

A Yes.

Q And what did you hear?

A All I could hear was scuffling and just a bunch of

yelling and screaming. That's all.

Q Then you heard Graham say something?

A Graham didn't say anything.

Q You heard one of the guards say something to Graham?

A Well, he said to him "Don't you say anything or you will get some of the same". And he didn't say anything. He just laid there.

Q What happened then?

A Then Schlegel came over to my cell and said the same to me and he said "Don't you say a word too or you will get the same". So I just told him to go fuck himself.

Q And what happened then?

A And then he flipped right out there. He told one of the other guards with him to open up my cell. He said he was going to teach me a few things. So they opened up my cell. Then they threw me down on my bed and I didn't resist. I just tried to protect myself and started using some, I'm not sure if it was mace or not but it burned.

Q I see. Was it gas?

A Yeah, it was some kind of spray. I don't know what it was.

Q Were they searching under your mattress at all during this, do you recall?

A It was the next day they searched under my mattress.

Q You don't recall him searching that night?

A No, I was laying on my bed then.

Q And how were you protecting yourself?

A Just with my arms, holding them in front of my face because they were like smacking, they were slapping, not punching.

Q I see. You were slapped?

A Yeah.

Q And what part of you was slapped?

A Well, they couldn't get at my face so they were just slapping me at random. That's all.

Q How many guards?

A I don't know.

Q Who was doing it?

A Schlegel I know for sure.

Q Any of the others?

A I don't know.

Q Were they using any billies or weapons like that?

A No.

Q They were slapping you with their open hand?

A Yes.

Q Then suddenly there was some kind of gas used on you?

A Yes.

Q Did you see what this gas came out of?

A No, I didn't because I had my arms over my eyes and

they were using this junk. I don't know what it was but they couldn't get my eyes with it so they sprayed in my nose and down my throat.

Q I see. What did it smell like?

A Ether.

Q And you don't recall seeing what kind of a gadget was being used when this was being squirted?

A No. Well, I just didn't like what they were doing and I tried to push it away and then they squirted it into my eyes and I didn't see anything after that.

Q Were you saying anything to them as this was going on?

A Yeah, I was. I was telling them all to fuck off.

Q And were they saying anything to you?

A I don't remember.

Q And what happened after they squirted you with this stuff?

A Well, he just smacked me a few more times in the head because I dropped my guard then, you know, when I put my hands in front of my eyes.

Q What did he hit you with?

A His hand.

Q Open or closed?

A Open.

Q So he slapped you?

A Umhm.

Q Did he cause any bruises?

A No.

Q Do you recall being hit with any weapons that night?

A No.

Q Do you recall striking any of the guards when they came in?

A No.

Q Did you after this gas was squirted in your face, did you seek any medical attention?

A Well, no. It just burned for about fifteen minutes and my eyes were just watering and my face got red with what was on my skin.

Q Did you discuss this with any of the fellows who were left in the cell block with you?

A Yeah, we were talking about it like afterwards.

Q Who were you talking to?

A Graham.

Q What did you say to him?

A I just said they just squirted something in my eyes because like I was saying that I couldn't see. And he said "What's the matter, what's the matter" so I just told him they squirted some junk in my eyes.

Q I see. And you said it smelled like ether?

A Yeah.

Q You didn't see any of the guards other than Mr. Schegel at that time?

A I didn't know any of them.

Q I see. Do you know any of them now?

A I know them all now.

Q I see. Do you recall having seen any of the other guards that you could now name?

A Well, no. I don't remember who was there but I know just about all the guards now.

Q But you know for sure Mr. Schlegel was there?

A Yeah.

MR. PEACOCK: Answer other counsel, please.

CROSS-EXAMINATION BY MR. STILWELL:

Q How many of the guards came into your cell?

A All that were there. I don't know how many were there.

Q Well, was there --

A About five.

Q Five. When Mr. Schlegel lost his temper and told somebody to open the door of your cell, did he come in immediately or --

A Yes.

Q He didn't say "Hold it boys, I am going to go down to the guard room and get the mace"?

A No.

Q He came right in?

A Came right in.

Q So whatever he squirted you with he must have had

it on him?

A Yeah.

Q When he came into your cell, you saw him come in of course?

A Umhm.

Q What did he have in his hands?

A I didn't look to see.

Q Now, just a minute. You didn't look to see. What did he have in his hands?

A I don't know.

Q You don't know what he had in his hands?

A No.

Q Did he have anything in his hands?

A I don't know. I didn't look to see.

Q You didn't look. Here was a man coming in to assault you and you didn't look to see what he had in his hands?

A No.

Q What did the others have in their hands?

A I don't know. I couldn't see them. He was the only one I could see in the front.

Q And he approached you directly?

A Yeah.

Q And reached out for you?

A Well, yeah. He come right in and then, well, I was on my bed.

Q And then he reached for you?

A Well, yeah.

Q But you didn't see what he had in his hand?

A No. How am I supposed to see anything if I have got a guard in front of me, putting my guard up.

THE COMMISSIONER: Witness, just answer the question.

MR. STILWELL: If I understand you correctly, it was Mr. Schlegel that approached you directly?

A Umhm.

Q There wasn't anybody between you and him?

A No.

Q But you didn't see anything in his hands?

A No.

Q And he didn't have a billy club as far as you know?

A As far as I know, no.

Q But he did have some kind of gas?

A He had it -- maybe he didn't have it. Maybe one of the other guards had it.

Q But whoever had it, they had it there right then, didn't they?

A Yeah.

Q They didn't adjourn for five minutes to go and get it?

A No.

Q And you are certain that he ordered somebody to open the door so that he could come in and beat you up?

A Umhm.

Q For no other reason?

A No other reason, no.

Q If he hadn't opened the cell door, there's no way he could have got at you, is there?

A No.

Q And your evidence is that he lost his temper, he ordered them to open the door and came in and he assaulted you?

A Yes.

Q That's your evidence?

A Yes.

Q Do you say that Mr. Addinall was there too?

A No he was not. I thought he was but he wasn't.

Q In your statement which I will show you -- first of all, I will show you a copy of a statement which appears to bear your signature. Is that your statement?

A Yes.

Q Is that in your writing?

A Yes.

Q I will read you part of it.

A May I sit down.

THE COMMISSIONER: Certainly.

MR. STILWELL: "Because I curled up into a ball and Schlegel couldn't get at my face he took a can of mace and squirted it all over my face". Is

that what you said in your statement?

A Umhm.

Q Do you still say that?

A I can't be sure.

Q What do you mean? You can't be sure of what?

A What it was he squirted in my face.

Q Well, what did you have in mind when you made the statement?

A Well, this is what I thought it was because this is what they used every other time.

Q Every other time what?

A Well, the night we went down there, Mr. Merriam had a can of it in his hand.

Q So you know what a can of mace looks like?

A Yeah.

Q And you knew that before you made this statement?

A Yeah.

Q And when you made the statement you said that Schlegel had it?

A I didn't say he had one.

Q It says "Took a can of mace and squirted it all over my face". Would you like to look at it again?

A All right. I didn't say he had it at the time. He may have got it off somebody else.

Q "He took it" you say in the statement?

A Yeah.

Q At the time you wrote that statement, you knew what a can of mace looked like?

A Umhm.

Q Today you say you don't know whether he had one or not?

A Well, I couldn't see because I had my arm in front of my eyes.

Q Do you know what mace smells like?

A No.

Q You think it smells like ether though?

A I don't know what it smells like. I never smelled it before.

Q But whatever you got smelled like ether?

A Umhm.

Q So if mace doesn't smell like ether, then what you got wasn't mace, is that right?

A I guess not.

Q The whole thing is an invention, isn't it?

A No, it isn't.

Q It's a lie, isn't it, from beginning to end?

A No, it isn't.

CROSS-EXAMINATION BY MR. MACDONALD:

Q I take it whatever was squirted at you you didn't see exactly where it came from, is that right?

A Yes.

Q Can you say for sure whether Schlegel had it or not?

A No.

Q You said you can't say for sure whether it's mace or not?

A No. All I know is the sensation it gave to me.

Q It was definitely a spray?

A Yeah.

Q Can you describe again the effect that it had?

A Burning.

Q And where did it go?

A First it went into my nose and then down my throat.

Q And then?

A And then into my eyes.

Q And how long did it bother you?

A Fifteen minutes, twenty minutes.

Q Were you all right the next day?

A Yeah.

Q Does it make you drowsy?

A No.

Q Made your eyes water?

A Yeah.

Q Is it a lie or not that it happened to you?

A No.

Q Have you had any difficulties with Schlegel before this?

A No.

Q Have you had any since?

A No.

Q Do you dislike Mr. Schlegel?

A No.

MR. MACDONALD: Thank you.

THE COMMISSIONER: Mr. Meurin.

CROSS-EXAMINATION BY MR. MEURIN:

Q Did you complain to anyone either that night or the next day about the treatment that you had received?

A No.

Q Never registered any complaint at all?

A No.

Q Sir, now at the time you were in the segregation cells below the guard room?

A Yes.

Q And is that because you had been found guilty or pleaded guilty in Warden's Court to creating a disturbance?

A Yes.

Q Had you pleaded guilty or been found guilty?

A Pleaded guilty.

Q You had pleaded guilty. Now, I take it that someone who normally breaks the prison rules, he ends up in Warden's Court and he may end up in the segregation cells, is that correct?

A Yes.

Q Now, would you agree with me when I make the statement that you were put in those kind of cells because you are a troublemaker?

A You could.

Q And sir, I have one thing that's been troubling me in the last several weeks while this Inquiry has been going on. It seems that most of the complaints that have been registered by inmates in this Inquiry have been done by troublemakers. Now, could you explain that coincidence?

A No.

MR. MEURIN: No further questions.

MR. PEACOCK: I wonder if I might ask one more question.

RE-EXAMINATION BY MR. PEACOCK:

Q Mr. Kemp, I think you have said that you knew what a can of mace looked like because you saw Mr. Merriam with some when you were taken down there? Did Mr. Merriam use that on any of the inmates that time?

A No, but he threatened to.

Q What did it look like?

A It was a black can.

Q And how big was it?

A About that big.

Q About six inches long?

A About that big.

Q How big around?

A Oh, about maybe that big.

Q About three inches in diameter?

A Maybe four, yes.

Q Did you see if it had any kind of a special top on it?

A No. He just said it was mace and he said he would use it if he had to.

MR. PEACOCK: I see, thank you.

THE COMMISSIONER: No questions.

(Witness retires)

MR. PEACOCK: Would you call Wallace Graham, please.

WALLACE JOHNSTON GRAHAM, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Graham, you are presently incarcerated at the Calgary Correctional Institute?

A That's correct.

Q And you were there on June 24th, 1973?

A I was.

Q I understand that you were housed that day in the segregation cells?

A That's correct.

Q And those are the cells under the guard room?

A Right.

Q And you had been taken down about a day before, had you or that day?

A I think it was the same day. I'm not --

Q And you were taken down at the same time as Mr. Kemp?

A That's right.

Q And you and Mr. Kemp were in separate cells?

A We were.

Q And there was one cell separating you that was vacant?

A That's correct.

Q All right. Would you tell us what happened that night?

A This was after lights out. I was lying on my bed and I was in cell #1. Number 2 was vacant and John Kemp was in cell #3. And shortly after lights out, the front, you come in the front. The front door opened and Mr. Schlegel and Mr. Cater and some other officers came in and they were bringing an inmate in. Now, he didn't want to come in so they were using slight force to bring him in, and he was put into cell #2 right beside me.

Q Who was that, Rocheleau?

A That was Rocheleau, yeah.

Q And what happened?

A Well, they locked Fred Rocheleau up and then Mr. Cater turned to me and I was still laying on my bed and he swore at me. And he said I had better keep quiet or, if I wanted to stay healthy.

Q Are you sure it was Mr. Cater?

A Yes, it was.

Q And this is at the time they brought Rocheleau and

this other, Harwig down?

A Yes. that's correct. So I didn't say anything and then Mr. Schlegel, he turned to Kemp and he said the same thing to him. And Kemp, he replied, Well, he swore back at him.

Q What did he say?

A He said "Well, fuck you. I didn't say anything".

Q All right. What happened then?

A And Mr. Schlegel, he -- he got kind of all excited and he said "Open up this cell, open up this cell. I'll teach you not to swear at me". And I couldn't see what was going on. I could only hear because the cells are too far apart. And I heard the cell was open and I heard slaps and I heard Kemp yelling and the last I heard from him he yelled "Oh, my eyes, my eyes" and he couldn't see. And this took only about five minutes. Then they just left the -- left the dorm and Kemp said -- told -- he yelled over to me, he said "They sprayed me, sprayed something in my eyes and I couldn't see what was going on". I asked him "I said "Did they hurt you?". And he said "Well, not much. I had my hands up above my head but they tried to beat me up.". And that's about all there was to it.

Q All right. Prior to the guards, Mr. Schlegel ordering Kemp's cell door open, did you hear him say anything with respect to a search?

A No, nothing at all.

Q I see. Did anyone enter your cell at that time?

A No, they didn't.

Q What were you in segregation cells for?

A Causing a disturbance in the East Wing.

MR. PEACOCK: Answer other counsel, please.

CROSS-EXAMINATION BY MR. STILWELL:

Q There's a solid wall between the cells, is that correct?

A Yes, there is.

Q But the bars in front?

A Right.

Q So you can hear what's going on in the cell next to you?

A Quite easily. It's not a closed door on the front. It's completely open except for the bars.

Q And Kemp could be as close as just --

A From me to you.

Q Or even closer?

A Even a little bit closer, yeah.

Q And the sound could travel but you couldn't see, is that correct?

A That's correct.

Q And the same air would circulate. It's connected in space, isn't it, except that there's one separate wall you can't see through?

A Right, that's correct.

Q What time did you say this incident happened?

A Well, I have no way of knowing exactly what time it was but I imagine, the lights down there go out at ten o'clock so it was after ten o'clock.

Q You haven't mentioned that you were affected in any way. I take it therefore that your eyes weren't burning or anything like that?

A No, I -- nobody came in my cell at all. I just laid on my bed. I didn't say anything.

MR. STILWELL: Thank you.

CROSS-EXAMINATION BY MR. MEURIN:

Q Was Rocheleau resisting when he came in?

A I don't think he was actually. Well, he wasn't resisting that he was fighting or anything. He was just you know, sort of holding back. He didn't want to be put in the cell but there was no fighting going on.

Q The guards didn't punish him or anything?

A Not that I seen, no.

Q What, did they just have him by sort of the arm or the shoulder and just lead him along?

A Just sort of helping him get into the cell. He didn't really want to go in. That's all.

MR. MEURIN: No further questions.

EXAMINATION BY THE COMMISSIONER:

Q Did you smell anything unusual down there?

A No, I didn't.

Q That is after the guards came in and after they left?

A No, I didn't smell anything at all.

THE COMMISSIONER: Thank you.

MR. PEACOCK: I wonder if I might ask one more question.

RE-EXAMINATION BY MR. PEACOCK:

Q Mr. Graham, you have indicated that Mr. Cater came in and was the person who suggested to you that you better not hear (sic) anything, is that correct?

A That's correct.

Q You don't recall Mr. Cater coming down later?

A No, I don't.

Q I see. Did you recognize any of the other guards that were there at that time with Mr. Schlegel?

A No, I didn't.

MR. PEACOCK: Those are all the questions I have, thank you.

THE COMMISSIONER: Thank you very much, Mr. Graham.

(Witness retires)

MR. PEACOCK: Commissioner, the evidence has now been heard with respect to this one incident. You will recall that my learned friend Mr. Stilwell and I believe Mr. Meurin were posing some hypothetical questions to the guards as a result of a decision to call the guards first in this incident as opposed to the inmates. I have spoken briefly with Mr. Stilwell and I have scheduled on the basis that if he wishes

Mr. Schlegel or Mr. George recalled after hearing whatever evidence he's heard today, I will see to it that they are placed on the stand tomorrow. The other thing I should point out is that this is the first indication that my records show of Mr. Cater's involvement. Perhaps we should make arrangements to have him testify with respect to the one incident in the morning.

THE COMMISSIONER: Yes. Mr. Stilwell.

MR. STILWELL: Yes, in view of these allegations which were not present in my mind at the time that Mr. Schlegel was on the stand before, I would like to have him back. However, I would like to have him back tomorrow to give myself time to prepare for it. As you know, I have just undergone an arduous journey to the eastern Arctic.

THE COMMISSIONER: Your sacrifice has been noted.

MR. STILWELL: In the interest of protecting the Eskimos from the influence of alcohol. There's no one there to protect the whites, I am sorry to say, so if we could adjourn now until tomorrow morning and at that time I or my counsel will examine Mr. Schlegel and Mr. Cater.

THE COMMISSIONER: Thank you.

MR. PEACOCK: I think that would meet with the convenience of me because we haven't got them here today anyway.

THE COMMISSIONER: Tomorrow morning at ten o'clock.

(Hearing adjourned)

(Please go to page 962)

OCTOBER 23rd, 1973

DEPOSITION TAKEN AT 10:00 A.M.

MR. PEACOCK: Would you call Mr. Cater, please.

THE CLERK: Your full name, please?

THE WITNESS: Walter James Cater.

WALTER JAMES CATER,

having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q MR. PEACOCK: Mr. Cater, what is your position at the institute?

A Correction Officer Class 2.

Q Were you so employed on June 24th, 1973?

A Yes, I was.

Q Were you on duty that day?

A I was on the afternoon shift then, from 10 to 4.

Q I'm sorry?

A I started at 10 until 4.

Q 10 until 4?

A Yes.

Q On that date did you have occasion to assist in moving inmates by the name of Unsworth and Harwig from the meditation cells to the segregation cells in the institute?

A No sir.

Q Did you have occasion to go down to the segregation cells, that is the cells underneath the guard room during your

shift on the 24th of June?

A During my shift, yes.

Q What time did you go down?

A I would say approximately 4:10, maybe, something like that.

Q What was your purpose in going down there?

A Well, when we take over shifts we want to go down and make sure that things are alright down there because -- well, for instance, when the wing, the officer takes over a wing they have to do their check and count, you see, and this is the idea of me going down.

Q This is just a general inspection?

A Yes.

Q When you were down there were the inmates Rocheau and Harwig in the cells in that area?

A Yes sir.

Q Was there anything out of the ordinary?

A No, I couldn't say there was.

Q Did you go into any of the cells on your tour down there?

A No, we never go into the cells.

Q Did you observe any of the officers in the cells during your tour down there that day?

A There couldn't have been anybody down there, if I went down there the rest of the fellows were out.

MR. PEACOCK: Those are all the questions that I have.

MR. WILKINS: No questions.

MR. MACDONALD: No questions.

MR. MEURIN: No questions.

THE COMMISSIONER: Did you go down alone Mr. Cater?

A Yes sir.

THE COMMISSIONER: That is all.

(Witness retires)

MR. PEACOCK: Will you recall John Schlegel.

THE CLERK: Your full name, please?

THE WITNESS: John Schlegel.

JOHN SCHLEGEL, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q MR. PEACOCK: Mr. Schlegel, you have previously testified that you assisted in moving inmates Rochealu and Harwig from the mediation cells to the segregation cells on June 24th, 1973?

A Right.

Q After you got them in their cells down there did you have occasion to enter the cell of an inmate by the name of Kemp?

A Yes, we did.

Q Can you tell us what happened after you got Harwig and Rochealu into the cells in that area?

A Well, Kemp made some sort of a derogatory remark and said "He would get one of us" and he made as though he

had something in the cell so we opened the gate and went in.

He acted as though he had something underneath the pillow, this sort of thing, so all we did was just lifted the pillow up and see that there was nothing underneath there and I looked behind the mirror and a couple of places around the toilet bowl and then we came out.

Q Do you recall saying something to Mr. Kemp "Who do you think you are telling to fuck off", or something to those words?

A I don't think -- I don't recall saying anything like that. I think I may have said something like "We better see what he's got", something like that.

Q Alright. Who went into the cell with you?

A I believe it was Mr. George and myself.

Q Did you have to remove Kemp off his bed in order to search it?

A No.

Q Where was he when you went in?

A On his bed.

Q Did you strike Kemp when you were in his cell?

A No.

Q Did you slap him?

A No, never touched him.

Q Did you have anything with which to shoot gas from on your possession?

A No.

Q Did any of the guards who were with you that day have anything to shoot gas from?

A Not to my knowledge. I didn't see any.

Q When you were in Mr. Kemp's cell did you or did any of the other guards shoot gas at Mr. Kemp's face?

A I don't know, I didn't see anybody do it.

Q You didn't do it?

A No, I didn't.

Q Do you recall hearing a hissing sound as if someone was shooting him with gas?

A No, but I would know if they used it.

Q How would you know?

A Well, from the smell for one thing.

Q Are there containers of mace available to personnel at the institute?

A No, we don't have any mace but they have tear gas, though.

Q What is the smallest item that would contain this tear gas for shooting purposes?

A About so long.

Q Is it a gas billy?

A No, it's a spray.

Q What colour is it?

A The spray itself?

Q Yes.

A Well, it looks like water.

Q What colour is the container?

A Oh, black.

Q Where are these items kept?

A In the guard room under lock and key.

Q And do you recall seeing any of the guards down in the segregation cells that day in possession of one of these items?

A No, I did not.

Q And your evidence is that at no time did you spray Mr. Kemp when you entered his cell?

A I never touched him.

Q Did you observe any of the guards, other guards --

A I don't believe he did, I don't think he was even touched.

MR. PEACOCK: Answer other counsel, please.

EXAMINATION BY MR. WILKINS:

Q MR. WILKINS: Mr. Schlegel, if tear gas was used in one of the cells in this area would people that are in the other cells be aware of it?

A Oh, definitely.

Q Why is that?

A Well, the smell carries around.

Q The cells aren't so segregated that the smell --

A No, they are opened cells.

Q I see. You had some experience with tear gas?

A Yes, I have.

Q And if a person was shot directly into the face with tear gas how long would the effects last?

A A good two hours.

Q Have you experienced this before?

A Yes, definitely.

Q And just one final question Mr. Schlegel, what does tear gas smell like?

A It sort of has a smell of its own.

THE COMMISSIONER: I am sure it's one that you won't forget.

A It's something like -- it's a bitter smell, something like burnt almonds or something to that effect.

Q MR. WILKINS: Does it smell like ether?

A No.

MR. WILKINS: I have nothing further, thank you.

THE COMMISSIONER: Mr. Macdonald.

EXAMINATION BY MR. MACDONALD:

Q MR. MACDONALD: Mr. Schlegel, you had participated in the removal of Harwig and Rochealu --

A Yes --

Q The hole the segregation cells?

A Yes.

Q And I take it in the course of that there was an altercation and some violence, wasn't there?

A Not down in that area, none at all. In the hallway,

yes.

Q In the course of moving him from one area to another?

A One of them.

Q Pardon me?

A One, yes.

Q Was one of the guards struck?

A Yes, right.

Q Was he bleeding?

A He had a scratch.

Q I take it it was not a normal move of prisoners from one area to another?

A A normal move but not action on his part.

Q There was difficulty in moving him, there is no question about that?

A That's true.

Q Were you excited or bothered by this?

A Not anymore than I am now.

Q Who opened the door to Kemp's cell?

A Kemp?

Q Yes?

A I couldn't actually tell you. I believe -- I think it was Norm George, I think.

Q And did he open it on your instructions?

A He issued a threat to both of us. He would do automatically himself, "We'll see what he's got in there", that is what we said. I didn't say "Open that door", but; "We'll see what he's got in there".

Q What was the threat?

A He was going to get us or something to that effect.

Q Something to that effect?

A Yes.

Q Are you sure he made a threat at all?

A Yes, definitely.

Q But you just don't remember exactly what it was?

A He made a threat that he was going to get me. How he was going to get us I couldn't tell you.

Q Did anybody tell a person by the name of Graham who was down there to be quiet?

A Don't ask me, I can't tell you.

THE COMMISSIONER: Just a minute. Mr. Schlegel, counsel has a duty here and he has asked a proper question if you know answer it.

A No, I don't know.

Q MR. MACDONALD: Did you ever say to Kemp "Keep your fucking mouth shut"?

A No, I didn't.

Q Did you tell him in any manner to be quiet?

A I don't think so. I think all I was concerned about was to see what he had.

Q I take it that you were putting Rochealu and Harwig in the cells at this point, right?

A They were in the cells.

Q And at this point you say that Kemp just yelled out "I am going to get you"?

A The minute we walked into the cells, yes.

Q But you don't remember how?

A I don't know how he was going to get us but he said "I am going to get you guys".

Q Well, why did you search his cell?

A I did.

Q I said why?

A Why?

Q Yes?

A He made out as though he had something under his pillow.

Q How did he do that?

A Reached under the pillow.

Q He reached under the pillow?

A Yes.

Q And you took that to mean he might have something?

A He issued a threat, yes, why not?

Q Was he laying on his bed --

A Yes --

Q When he made that threat?

A Yes, he was.

Q Did you hear Kemp at any time say; "Oh, my eyes"?

A No, I didn't.

Q Did you ever tell him that you were going to teach him a lesson?

A Not that I know of. I don't know.

Q Is it that you don't remember saying that?

A I don't think I said it.

Q How long were you in the cells, exactly?

A Not very long, we were only in there for a few minutes.

Q Can you tell me exactly what you did in there?

A I told you. Well, I looked under the pillow, lifted the pillow up and nothing was there and then we moved the mattress over this way to see if there is anything along the edge, whatever you wish to call it, and looked behind a mirror and looked around the toilet bowl.

Q Did you have to get Kemp up?

A No.

Q To check under the pillow?

A I said I lifted the pillow.

Q Well, was he laying on the pillow?

A Yes, he was.

Q And you checked under the pillow with him laying on it?

A Yes, I said that.

Q You didn't ask him to move?

A No.

Q Wouldn't it be easier to check under the pillow if you asked him to move?

A There was nothing there that we could see.

Q Wouldn't it be easier to check under the pillow if you asked him to move?

A Just as easy to lift the pillow up.

Q Was his head on the pillow?

A Yes.

Q But it was just as easy to check underneath the pillow when a man's head is laying on it --

A I said I lifted the pillow up and it was just as easy to lift the pillow.

Q Did you touch Kemp in any way?

A I don't recall touching him at all.

Q When you say you don't recall can you say positively one way or the other?

A Definitely I didn't touch him.

Q You did not touch him?

A If I touched him it would be accidental while I was lifting the pillow but I did not touch him.

Q And if inmate Graham said that he heard sounds of slapping coming from that cell he would by lying, would he?

A I can't say. I don't know if he said it, I just don't know.

Q Supposing he did?

A I'm not going to say if he is lying, I don't know.

Q You don't know what?

A Well, I don't know if he is lying. I don't know what he said.

Q Well, I am telling you that he said he heard sounds of slapping and I am putting the question hypothetically --

A Okay. Alright. Then he is lying, yes.

Q Graham is a liar?

A That's right, he is a liar if he said that.

Q And if he heard Kemp say; "Oh, my eyes", he is also a liar?

A Possibly. I didn't hear Kemp say anything.

Q And if Kemp says that you slapped him he is a liar too?

A Yes, definitely.

Q And if he says that you used mace he is also lying?

A Yes.

Q Why are they lying, do you have any ideas?

A Oh, yes, sure, I have idea.

Q Maybe you can tell me?

A Yes. They have had their little group meetings up there for the last month or two coaching each other, certainly I can see it.

Q Do you think that they are lying because they got together in the last month?

A Absolutely, yes.

Q Are they out to get you Mr. Schlegel?

A Well, out to make it rough, say.

Q Is it bothering you or any of the other guards?

A It doesn't bother me, no.

Q You can handle it?

A Right.

Q Do you consider yourself a tough guard?

A No.

Q Are you telling me it doesn't bother you in the least when they make these allegations against you?

A It doesn't bother me.

Q But there is no doubt in your mind that they are out and out lying, is that correct?

A Yes.

MR. MACDONALD: Thank you.

THE COMMISSIONER: Mr. Meurin?

MR. MEURIN: No questions.

EXAMINATION BY THE COMMISSIONER:

Q THE COMMISSIONER: Mr. Schlegel, you said you searched under the mattress?

A We just lifted the mattress, there is an edge on the bed and if they have anything they usually lay it along there and this is all we did.

When this incident took place we were getting close to supper time, we feed them around 4:00 o'clock so we didn't spend that much time with them because the meals were coming down and they had to be fed so there wasn't anything there so actually we didn't think that there was that much.

He was only put down there the day before, the evening before so I really didn't think he had that much in there if anything.

We just made a fast check, we had to check because he said "I'll get you" and he made sort of a motion as if he had something

there and we made a fast check and we checked the usual places and then we were out.

Q Mr. Schlegel, when you removed Harwig from there?

A Yes.

Q Did you go into his cell?

A No, he came out on his own.

Q And your evidence is you never went into his cell?

A Definitely.

Q Did you put your hand on him, did you lay a hand on him at all?

A No, no. He came out and he went with one of the officers and he was ahead of us all the way. I didn't even put him in the cell, I don't know who put him in.

Q Do you know who opened Harwig's cell?

A Mr. George.

Q Did George go into his cell?

A No, he didn't.

Q You are sure that neither you nor Correctional Officer George went into Harwig's cell?

A I am positive.

THE COMMISSIONER: Are there any questions arising out of that, gentlemen?

MR. MACDONALD: No questions.

THE COMMISSIONER: Thank you Mr. Schlegel.

(Witness retires)

MR. PEACOCK: Thank you Mr. Schlegel. That is the evidence

that we have with respect to what we call the second incident but there was one other guard involved I believe up initially in the cell block, a Mr. Umpherville and he is in the hospital with a cataract operation and is unavailable.

THE COMMISSIONER: It may very well be that Mr. Macdonald -- Mr. Macdonald, do you wish him made available?

MR. MACDONALD: No.

MR. MEURIN: No sir.

THE COMMISSIONER: Then I take it we can dispense with calling him.

MR. PEACOCK: Fine, sir. The conclusion of this portion takes us to a third incident, the investigation of Chief Inspector Roberts indicates took place as it involves an inmate by the name of Nurse and I will call him now, please.

THE CLERK: Your full name, please?

THE WITNESS: Brian Dale Nurse.

BRIAN DALE NURSE, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q MR. PEACOCK: Mr. Nurse, you are presently an inmate at the Calgary Correctional Institute?

A Yes.

Q And you were called to give evidence before on this

inquiry?

A Yes.

Q Now, were you an inmate on July 20th, 1973?

A Yes.

Q Do you recall where you were housed that day?

A Yes.

Q Where?

A The West Wing.

Q I see. And around noon that day were you called up to the guard room?

A Well, to the cubicle up at the front of the Wing.

Q Who called you up there?

A Mr. Woods called me up.

Q Was he the guard on duty?

A Yes,

Q Do you know why he called you up there?

A No, not at the time, I didn't.

Q Well, once you got up there what happened?

A Well, Mr. Cater was there and had a sign from my locker and told me I was not supposed to have it there.

Q Alright, where did this conversation take place?

A In the cubicle.

Q You were in the cubicle itself?

A Yes.

Q And Mr. Cater had some kind of a sign?

A Yes.

Q How big was it?

A About 6 x 10.

Q 6 inches by 10 inches?

A Yes.

Q And what did the sign say?

A It said; "Doctor John and B. Nurse MDA".

Q Did you make this sign?

A Yes.

Q And it was made out of paint, was it?

A Well, it was papered on.

Q And Mr. Cater advised you that he got this out of your locker?

A Yes.

Q Is that where it was?

A It was attached to my locker.

Q I see. Inside or the outside.

A The outside.

Q What did he say to you?

A He said that I wasn't supposed to have it there and I asked him why and he told me that he just didn't want it there.

Q Were you aware that there was a rule against hanging signs on lockers?

A No.

Q I see. What happened then?

A Well, then he told me to take those beads off my wrist.

Q You had beads on the wrist?

A Yes.

Q Were you aware that it was against regulations to wear beads on your wrist?

A No.

Q I see. And you were told to take them off?

A Yes.

Q What did you tell him when he first mentioned the sign to you?

A Well, I just asked him why, why it wasn't allowed to have a sign there.

Q What did he say?

A He just told me -- he didn't say nothing then but before he just told me he didn't want it there.

Q And then he told you to take the beads off your wrist?

A Yes.

Q What did you say to that?

A Well, I told him "no".

Q What was first said to you?

A About the beads?

Q Yes.

A He said; "Take those fucking beads off your wrist".

Q What did you answer to him?

A I said; "no".

Q And then what did he say?

A Well, he just repeated it and I told him that I would take them off when I got back to my bed and he jumped up and told me that I wasn't going to my bed and that I was going to the hole.

Q Were there other guards present at this time?

A Yes.

Q Who?

A Mr. Woods and another man, I don't know who he was, he was not wearing a uniform.

Q Alright. What did you say to him when he told you you were going to the hole?

A Well, I told him I wasn't going to go. I told him that I was going to stay where I was.

Q Carry on and tell us what happened. We would like to have you tell us everything that was said between you and Mr. Cater?

A And then when he got up and said that I was going to the hole he shut the West Wing gate and told me to come with him and we walked out of the cubicle and stood against the wall and I told him that I wasn't going because there was no reason to go to the hole and then he told Mr. Woods to phone down to the guard room and tell some more guards to come up and told them to bring clubs and gas with them.

Q Did you hear this conversation between Mr. Cater and Mr. Woods?

A Yes.

Q Did Mr. Woods then phone the guard room?

A Yes.

Q What happened then?

A Well, I don't know exactly how long it was, it wasn't

too long but between five and eight guards come down. Mr. Merriam and a bunch of other guards they came in and Mr. Merriam told me that I was going to the hole and I tried to explain to him the situation and he just kept throwing questions at me if I was going or not and I just told him "No" and then Mr. Cater hit me and I fell into the corner by the garbage cans and the other guards jumped on me and they were beating on me and Mr. Merriam was trying to get in with a spray can, he sprayed at my face, you know, my eyes and down here, this side of my face and they dragged me out into the hall and started beating on me again, I don't know who it was but hit me on the back of the head with a billy club, I figured it was enough, I was going to go to the hole.

After a while they stopped and dragged me down tothe hole and they stripped me down in the hall and threw me into the cell.

Q Alright, let's stop here and go back to the time when the guards arrived from the guard room. Did you see if any of them had clubs with them?

A No.

Q You didn't see the clubs when they arrived?

A No.

Q There was Mr. Merriam?

A Mr. Merriam, Mr. Anaka, Mr. Holland, I don't know any of the other guards names.

Q But you figure there were about eight guards?

A Between five and eight, yes.

Q And at that time you say that Mr. Cater kept questioning you, was he saying that you are going to the hole?

A No, Mr. Merriam was questioning me.

Q What did he say?

A Well, he kept saying things like; "Are you going or do we have to take you down?

Q What did you say?

A I just kept trying to explain to him what the situation was.

Q Well, what did you say to him?

A Well, I told him that I wasn't going.

Q And then you say Mr. Cater hit you?

A Yes.

Q What did he hit you with?

A His fist.

Q Where did he hit you?

A In my right eye.

Q Had you taken a swing at any of the guards prior to that?

A No.

Q This is just after you were talking to Mr. Merriam?

A Yes.

Q And he punched you in the eye?

A Yes, he did.

Q Did you fall down?

A Yeah, I fell into the corner.

Q What happened then?

A Well, then they all jumped me and they were holding me down and Mr. Merriam was trying to spray me with a can.

Q Now, when they were holding you down were you fighting with them?

A Yes.

Q And he ultimately shot you in the face with this spray can?

A Yes.

Q And what happened then, were you picked up?

A Well, I was dragged out in the hall.

Q How were you dragged?

A By my arms, by my legs.

Q Were you stood up in the hall?

A No.

Q What happened when you got into the hall?

A Well, when I got into the hall they just started beating on me some more.

Q And they started beating on you with billy clubs?

A Well, at first they used fists and I felt a billy club on the back of my head.

Q You don't know who was wielding the billy club?

A No.

Q Alright. Then were you carried out or did you walk down to the hole?

A Well, Mr. Merriam and Mr. Cater were supporting me,

carrying me down into the hole.

Q When you got down to the cell block you were stripped?

A Yes.

Q Were you put into a cell?

A Yes.

Q What happened next?

A Well, I stayed in the hole until next morning and they took me out and put me in an observation cell for a week and I went to Warden's Court and I pleaded not guilty in Warden's Court for refusing a direct order and Mr. Jackson was going to give me a week's loss of priviledges in the block and I told him that I already spent a week of loss of priviledges and they just sent me back to the wing.

Q Well, in Warden's Court did you advise Mr. Jackson that you had been assaulted the day before by the guards?

A No, I figured that he knew about it.

Q I see. Were you injured?

A Yes.

Q And what injury did you suffer?

A Well, I had two black eyes and bruises on my chest and ribs.

Q Did you seek any medical attention for these injuries?

A No.

Q Did Warden Jackson comment on your injuries when you appeared in Warden's Court?

A No.

Q Did you raise them to him?

A No.

Q How old are you?

A 17.

Q I believe you indicated that your parents visited you about two days after this incident?

A Yes.

Q Did either of them comment about the injuries that you sustained?

A My father did.

Q What did he say?

A Well, he asked me what happened and I told him.

Q How old are you?

A 17.

Q How long have you been in there?

A Since last January, in the middle of January.

MR. PEACOCK: Answer other counsel, please.

EXAMINATION BY MR. WILKINS:

Q MR. WILKINS: Mr. Nurse, this sign that you put on the wall when did you put it up?

A About a week before it was taken down.

Q And what did that sign say, again?

A It said; "Doctor John and B. Nurse MDA"

Q And what was that to mean?

A Well, just a joke.

Q I take it when you had MDA after it it was a drug

implication, is that correct?

A Yes.

Q Now, when you were asked to take off the beads what was your immediate reply?

A No.

Q Why did you refuse to take them off?

A Well, like, I didn't even know that it was against the rules to wear them and I had them on for about four months.

Q Well, did you ask him if it was against the rules?

A Well, I asked --

Q At that particular time?

A No.

Q Well, you stated in answer to my learned friend that you would take the beads off when you got back to your bed?

A Yes.

Q So you were going to take them off?

A Yes.

Q Why didn't you take them off immediately when you were asked?

A Well, like, I do a lot of bead work, you know, and when I got back to my bed I could cut them off and save the beads.

Q Couldn't you have taken them off otherwise and put them in your pocket?

A No, there were too many, like, I had too many strands of

thread in them.

Q So that your evidence is that it was impossible for you to get those beads off?

A Not without scattering them all over the floor, no.

Q Well, how did you get them on?

A Well, I just sewed them on.

Q So you would have to cut them to get them off?

A Yes.

Q Now, there was some mention of a hole, is that correct?

A Yes.

Q And you said you were not going to the hole?

A Yes.

Q Why did you say that?

A Well, because I figured there was no reason to go to the hole and I expected to talk to one of the superiors and explain the situation.

Q Did you say in fact, Mr. Nurse, that it was going to take more than 10 men to get you into the hole?

A No.

Q You never said that statement at all?

A No.

Q And I put it if to you that one of the guards said that you made that statement you would say that the guard was lying?

A Yes.

Q This charge that you were up on in Warden's Court?

A Yes.

Q As a result of this incident?

A Yes.

Q What was the charge?

A Refusing a direct order.

Q It was also that you used threatening language to an officer, isn't that correct?

A No.

Q That's not correct?

A No, that was not read to me.

Q So your evidence today is that the only charge, the particulars of the charge that was before Warden's Court is that your refused to obey a direct order and that was it and nothing else?

A That's right.

Q Now, when you were in Warden's Court Mr. Nurse why didn't you mention that you had been struck by Mr. Cater and Mr. Merriam and that you wanted a charge laid?

A Well, I figured Mr. Jackson knew about it.

Q What would make you think that?

A Well, I was informed that he was there that day, he came down to the wing right after it happened.

Q Well, did you mention that you had been struck by Mr. Cater and Mr. Merriam?

A No.

Q You didn't mention that at all?

A No.

Q As a result of this incident?

A Yes.

Q What was the charge?

A Refusing a direct order.

Q It was also that you used threatening language to an officer, isn't that correct?

A No.

Q That's not correct?

A No, that was not read to me.

Q So your evidence today is that the only charge, the particulars of the charge that was before Warden's Court is that your refused to obey a direct order and that was it and nothing else?

A That's right.

Q Now, when you were in Warden's Court Mr. Nurse why didn't you mention that you had been struck by Mr. Cater and Mr. Merriam and that you wanted a charge laid?

A Well, I figured Mr. Jackson knew about it.

Q What would make you think that?

A Well, I was informed that he was there that day, he came down to the wing right after it happened.

Q Well, did you mention that you had been struck by Mr. Cater and Mr. Merriam?

A No.

Q You didn't mention that at all?

A No.

Q In fact you never even thought of making that allegation until you had a chance to talk it over with some of the other inmates, is that correct?

A Yes.

Q Isn't that a little peculiar?

A No.

Q When you had an opportunity in front of the Warden and that you wouldn't mention that?

A No, I don't find it peculiar.

Q But you just didn't think it was serious at that time?

A No, I figured he knew about it and I didn't figure there was much that I could do, you know.

Q Is that the reason Mr. Nurse or is it that you felt that you were responsible for the scuffling and the fighting that took place?

A No, I didn't feel I was responsible for it.

Q But you saw no reason to mention that to Warden Jackson at that time, at the time of the hearing?

A Mention what?

Q The fact that Mr. Cater and Mr. Meriam had struck you?

A I didn't figure I should mention it.

Q How long after did you decide to lay a charge against Mr. Cater and Mr. Merriam?

A It was about two weeks.

Q Pardon me, I'm sorry?

A I think it was two weeks.

Q You waited a full two weeks before you laid a charge?

A Yes.

Q And on whose advice was it that you laid the charge?

A Well, it was nobody's advice, you know, it was just -- I figured that I should do it.

Q Why did you wait two weeks?

A Because I was scared, I didn't think I should do it.

Q You were scared of whom?

A The guards.

Q When the mention was made about going to the hole Mr. Nurse, did Mr. Merriam try to talk you into going down there without any scuffle?

A No.

Q He never said "Let's go and there wouldn't be any problems"?

A No.

Q Who did you hit in this scuffle?

A Nobody.

Q You never hit anyone?

A No.

Q Well, were you kicking?

A Yes.

Q Were you swinging your arms?

A No.

Q You were just standing there kicking?

A No, I was pinned to the ground.

Q You were pinned to the ground but you were not swinging your arms?

A No.

Q Do you recall kicking any of the guards?

A I can't remember.

Q But you definitely recall you never hit any of the guards?

A Yes.

Q At any time?

A Yes.

Q From the time the incident started until it was finally over you never hit any of the guards?

A No.

MR. WILKINS: I have nothing further, thank you.

EXAMINATION BY MR. MACDONALD:

Q MR. MACDONALD: How tall are you Mr.Nurse?

A I think 5'6".

Q How much do you weight?

A 135 pounds.

Q Why were you in Spy Hill for?

A Fraud, B & E and grand theft, auto.

Q Have you had scuffles with the guards there before this incident?

A No.

Q You had a scuffle with the guard since?

A No, I never had any trouble.

Q Have you had a fight with an inmate up there?

A No.

Q So I take it there was no problem about this poster until he told you you couldn't have it, what did you say?

A I asked him why?

Q Did he give you an answer?

A No, he just told me that he didn't want it there.

Q There was no fight about this?

A No.

Q These beads that you had on were they loose or sewn on?

A Well, they were loose enough to turn but not loose enought to take off my wrist without cutting them.

Q Now, what did Mr. Cater say when he said that you were to take them off when you got back to your bed?

A He told me that I wasn't going to my bed because I was going to the hole.

Q What was your reaction to that?

A Well, kind of shocked me because I didn't figure there was any reason to goto the hole.

Q Did you ever get an explanation as to why you were going to the hole?

A No.

Q Did anything happen while you were waiting for the other guards to come?

A Well, I was standing against the wall and my hair was in my eyes and I went to brush it off and Mr. Cater

jumped back, I guess he figured I was going to take a swing at him and he says, he told me to go ahead and take a swing because he would like that, and I said; "I bet you would".

Q Did you ever swing at any of the guards at any time?

A No.

Q Is it possible that you might have hit the guards in the course of the struggle?

A I doubt it, not with my fist, no.

Q What were you doing during the course of the struggle with your hands?

A I was trying to get free.

Q Now, the entire time that this went on the doors to the West Wing, the block itself was that door opened or shut?

A It was shut.

Q Now, you mentioned about trying to explain, what were you trying to explain?

A Well, I tried to explain that I didn't see no real reason to go to the hole.

Q Now, how far from your face was the gas when it was sprayed?

A I can't really say, I would say about a foot, I think.

Q How long did it bother you?

A Pardon me?

Q How long did the effect of the gas bother you?

A About an hour after I was in the hole.

Q Did you have any clothes on when you were put in the hole?

A No.

MR. MACDONALD: Thank you.

EXAMINATION BY MR. MEURIN:

Q MR. MEURIN: Sir, were you given your clothes after you were put in the hole?

A Yes, about two or three hours later they came back in and gave me my clothes.

Q Had you been out of the institute shortly before this incident, in other words out on a day pass or temporary absence or anything like that?

A About three months before.

Q About three months before?

A Yes.

Q You have been out since then?

A No.

Q Sir, you have been in the institution about six months when this thing happened?

A Yes.

Q Now, where during that six months did you see people put signs up above their beds?

A Well, I have seen it fairly frequently.

Q And they are removed fairly frequently?

A No.

Q They are not?

A No.

Q Are you telling me that they are left up?

A Yes.

Q How many people did you see wearing beads?

A Oh, I would say about 40% of the inmates.

Q About 40%?

A Yes.

Q They were beads?

A Yes.

Q That are visible?

A Yes.

Q On their clothes?

A Yes.

Q All the time?

A Yes.

Q When you were asked to go to the hole by Cater, wasn't your reply something to the effect that you were not going to go to any fucking hole?

A No.

Q Now, after Mr. Merriam and the other guards came you were asked to go to the hole, is that correct?

A No, I wasn't asked, I was told.

Q You were told to go to the hole and you refused, is that right?

A Yes.

Q And you have given testimony to the effect that you tried to explain that you shouldn't go, is that correct?

A Yes.

Q Tell me this, why didn't you say; "I can't cut the beads off, I have to take them to my bed or I will lose them", why didn't you say that to him?

A When?

Q When you were asked to go to the hole?

A Well, because I was not talking about the beads, I was talking about going to the hole.

Q When Merriam and the other guards were there didn't you use words to the effect that you weren't going to the hole, if you were going to go to the hole that they would have to take you there?

A No.

Q You deny using words to that effect?

A Yes.

Q You say that an individual by the name of Anaka was there?

A Yes.

Q Was he helping in the subdueing of you?

A I don't know.

Q You don't know?

A No.

Q He is a social worker and not a guard?

A Yes.

Q Now, it was the next day that you were brought up in Warden's Court?

A No.

Q When was it that you were brought up in Warden's Court?

A A week later.

Q A week later?

A Yes.

Q And you still had black eyes then?

A Yes.

Q Now, when you were brought up in Warden's Court didn't the Warden refer you to a doctor?

A Yes.

Q And that was Dr. Carnat?

A I don't know his name.

Q Is he a psychiatrist?

A Yes.

Q And wasn't Dr. Carnat -- well, let me back up a bit. Were you on any kind of medication at the time of this incident?

A Yes.

Q What is that for?

A Epilepsy.

Q I see. Tell me this, would you be on some kind of pills each day for this epilepsy?

A Yes.

Q Do you know what the name of those drugs are?

A I think it's dilantin.

Q Did you ever save them up so that you can get high on them?

A No.

Q You didn't?

A No.

Q How long have you had epilepsy?

A I think it's been about two and a half years, since I have been informed.

Q And isn't that epilepsy as a result of glue sniffing?

A No, I don't think so.

THE COMMISSIONER: As a result of what?

MR. MEURIN: Glue sniffing, sir.

Nobody has ever told you that you have some form of brain damage or epilepsy as a result of glue sniffing?

A No, I don't think so.

Q Have you engaged in glue sniffing?

A Not for the past two years, no.

Q Not for the past two years?

A No.

Q But you were pretty heavy on glue sniffing at one time?

A For a couple of months, yes.

Q And you have been involved pretty heavily in other drugs as well?

A I wouldn't say involved heavily.

Q Well, let me put it to you, sir, that you have taken everything up to and including heroin?

A No.

Q You have not taken heroin?

A I've taken heroin twice, yes.

Q Have you taken MDA?

A Yes.

Q Now, you were also at Magistrates Court the end of 1971 and again in 1972?

A Yes.

THE COMMISSIONER: Mr. Meurin, would he be a juvenile at that time?

MR. MEURIN: This is before Judge Reed.

THE COMMISSIONER: How old were you at that time?

A 16.

THE COMMISSIONER: Alright.

Q MR. MEURIN: And there was a pre-sentence report done at that time, do you recall that?

A On what charge?

Q This is theft under $50.00?

A Yes.

MR. PEACOCK: I don't want to unduly interrupt but I am wondering if this is relevant to the question of what occurred on the night we are talking about.

THE COMMISSIONER: What about that Mr. Meurin?

MR. MEURIN: I think it only probably goes to the drug involvement, sir.

THE COMMISSIONER: Pardon me?

MR. MEURIN: The drug involvement.

THE COMMISSIONER: Well, on that basis I will allow you to pursue it.

Mr. Meurin, if I might make a suggestion as far as his convictions go, I don't think it has any bearing whatsoever, if you want to ask him directly of his drug involvement I would have no objection.

MR. MACDONALD: Quite frankly, sir, this has gone on with several of these inmates and if they have been on drugs at one time in the past I don't think what my learned friend is trying to get at here if its credibility I think, he is beyond it, quite frankly why we have to get into it here.

THE COMMISSIONER: That is an excellent objection. It will depend on how they answer the question Mr. Macdonald. But it does seem to me if a person has been on hallucinogenic drugs it might be with respect to credibility and maybe not so much to be truthfullness but with respect to his ability to recall.

MR. MACDONALD: Well, I would suggest that it should be put directly to him. If we are going to make allegations that there is something wrong with the man's mind because the drugs have destroyed his mind and he doesn't recall let's not pussy-foot around it and put it directly to him.

THE COMMISSIONER: I appreciate that Mr. Macdonald and it is something that I would have to take into consideration in making a rather diffi-

cult decision as to credibility on both sides.

MR. MEURIN: Well, sir, I am putting an excerpt from the probation report which was presumably read out in court at that time.

THE COMMISSIONER: Well, Mr. Meurin, I am afraid we cannot go that far. The report was probably prepared by a probation officer.

MR. MEURIN: Well, I want to know whether he contradicted it at that time.

THE COMMISSIONER: Probation reports have always bothered me. They are made up by one person who made an investigation and probably without the assistance or the cooperation of the accused.

Why don't you ask him directly, if you wish, what his involvement in the drug scene has been.

MR. MEURIN: Well, I think I only wanted it to the extent of glue sniffing and that there is a suggestion that the epilepsy is as a result of that --

MR. MACDONALD: That is in the probation report. If he is going to say that this man suffers epilepsy as a result of glue sniffing then the doctor should be called for that and again I would suggest that my learned friend is relying on the probation report and he has drawn a conclusion and as you have pointed out it's one man's opinion.

THE COMMISSIONER: Yes, you have gone a long way Mr. Meurin.

Q MR. MEURIN: Sir, you have indicated that it was about two weeks after you decided to lay a charge as a result of this?

A Yes.

Q Now, tell me, did you talk to anyone from the John Howard Society or any legal aid people or anything like that?

A No.

Q You didn't?

A No.

Q You did send a letter out to CKXL?

A Yes.

Q And presumably they still have that letter?

A Presumably, yes.

MR. MEURIN: I have no further questions.

MR. PEACOCK: I have a couple of questions Mr. Nurse.

You have indicated that you told Mr. Cater you were going to go back to your bed and take your beads off and if you took them off there they would go all over the floor --

THE COMMISSIONER: I don't believe he said that, that they would go all over the floor.

Q MR. PEACOCK: I'm sorry. You told

him that you would take them off back at the bed, is that correct?

A Yes.

Q And the reason you told him that, I gather, was because you had to cut them off?

A Yes.

Q What were you going to cut them off with?

A Razor blade.

Q I see. Is that with the razor that is supplied to you?

A Yes.

Q You indicate that about two weeks went by before you decided to lay a complaint with respect to this incident, is that correct?

A Yes.

Q I think you told Mr. Wilkins when he was examining you that you discussed this matter with other inmates before you decided?

A Yes.

Q Would you tell us who you discussed it with?

THE COMMISSIONER: Mr. Peacock, Do you want to tell us who you discussed it with because I will certainly protect you from that.

A Well, I am wondering if it would hurt --

THE COMMISSIONER: Do you want to tell us who you discussed it with or don't you?

A Not particularly, no.

THE COMMISSIONER: I think that is the

end of it.

MR. PEACOCK: Alright, thank you, that is all.

EXAMINATION BY THE COMMISSIONER:

Q THE COMMISSIONER: I have a couple of questions. You say that you didn't appear in Warden's Court until a week after the incident?

A Yes.

Q Where were you during that week?

A In the observation cells.

Q You were taken from the hole and put in the observation cells?

A Yes.

Q How long were you in the hole before you were placed in the observation cells?

A A day.

Q And then six days later you appeared in Warden's Court, approximately?

A Well, I think it was seven days.

Q Seven days?

A Yes, because this happened on the Friday and I went to court on the next Friday.

Q Pardon me?

A The incident happened on the Friday and I went to Warden's Court the next Friday.

Q Now, with respect to the gas was it squirted directly into your eyes?

A Yes.

Q From a distance of how far?

A I would say about a foot.

Q About a foot?

A Yes.

Q What happened to you after it was squirted, what reaction did you have as a result of that?

A I just closed my eyes.

Q And that was all there was to it?

A Well, I tried to cover them with my hands.

Q Did you cry or did tears come to your eyes?

A Yes.

Q Profusly?

A Yes.

Q How long did you continue with tears in your eyes?

A For about an hour after I was in the hole.

Q You got a real good shot, did you?

A Yes.

THE COMMISSIONER: Thank you.

MR. MACDONALD: I have nothing further.

MR. PEACOCK: I have nothing.

RE-EXAMINATION BY MR. WILKINS:

Q MR. WILKINS: Sir, I just have one question. Mr. Nurse, what was the extent of your injuries?

A I had two black eyes and other bruises on my chest and ribs.

Q Bruises and a black eye?

A Yes.

Q You didn't have any opened cuts or anything?

A Well, my lip was cut.

Q Where was it cut, on the outside or the inside?

A On the outside -- I really don't know, it was just bleeding.

Q You recall making a statement in this matter on the 13th of September, did you make a written statement?

A Yes.

Q It was typed and you signed it?

A Yes.

Q May I just read from the statement --

THE COMMISSIONER: I think what you should do is put the statement to him and ask for his views.

Q MR. WILKINS: Mr. Nurse, I would ask you to read the statement. Firstly Mr. Nurse, is that your signature at the bottom of that statement?

A Yes.

Q Is this the whole statement here?

A Yes.

Q Would you just read this part to yourself, the first couple lines there.

You agree that is what happened?

A Yes.

Q Do you say anywhere in that statement that you were

cut?

A No.

MR. WILKINS: Thank you, I have nothing further.

THE COMMISSIONER: Thank you Mr. Nurse.

MR. PEACOCK: Thank you Mr. Nurse.

(Witness retires)

MR. PEACOCK: Five minutes, sir?

THE COMMISSIONER: Yes, five minutes.

(Hearing adjourned)

(Hearing resumes)

MR. PEACOCK: Call Walter Cater, please.

THE CLERK: Do you wish him sworn?

MR. PEACOCK: Mr. Cater was sworn this morning, do you wish him resworn?

THE COMMISSIONER: No, you understand that you are still under oath, do you?

THE WITNESS: Yes.

WALTER JAMES CATER, having previously been sworn, examined by Mr. Peacock, testified as follows:

Q MR. PEACOCK: On July 20th, 1973 were you on duty as a C.O.2 at the Calgary Correctional Institute?

A That's right.

Q And at that time what were you in charge of?

A I was C.O.2 at the guard room that was the second man in the guard room.

Q Did you have occasion to be down in the West Wing at around lunch time?

A Yes, there was a man missing on roll call and I went down to the West Wing to check to see if he was in his bed but as it was the fellow was already working and I had not been informed about this and as I came back down I passed Nurse's bed and I noticed a sign on his locker.

Q Is there a regulation in the Institute about signs on lockers?

A Yes.

Q What is the regulation?

A The regulation, I believe my lawyer has it, if you would like me to read it I believe he will hand it to you.

Q Yes, perhaps you can read what the regulation says?

A This is dated February 7th, 1973: "No photos, pictures of any type are to be posted on walls or lockers. Family photos, post cards of a suitable nature will be allowed on display, not to be posted, taped, glued or stuck to walls or lockers in any manner any inmate defacing or violating this regulation will be placed on charge.

Q I see. Was a copy of that regulation ever posted in the West Wing?

A Yes, it was posted, as a matter of fact I checked on it

on the date that this happened and it was still there, it was on the left hand corner of the notice board in the West Wing.

Q Now, when you saw this poster on Nurse's locker what did you do?

A I waited for him in the wing until he came back and I asked him to remove the rest.

THE COMMISSIONER: Pardon me?

A I asked him to remove -- I took one poster down, you see, there was three on there. The one I took down had Nurse, B. MDA, STP and other junk, that is what the poster had on it.

Now, I thought it was pretty poor in the West Wing there was a large number of men in the West Wing and he was advertising that he was the fellow that was handing out the drugs but as I say I called him into the cubicle and I asked him about this, I said; "Would you mind removing the rest of the posters", and he said; "No f'in way".

THE COMMISSIONER: Pardon me?

A He said no f'in way.

THE COMMISSIONER: Come now, what did he say?

A He said; "No fucking way".

THE COMMISSIONER: Had you removed the posters previously?

A I had removed one, yes.

THE COMMISSIONER: Why didn't you remove this one?

A Well, I just wanted to point out to the fact that Nurse had them there and incidently, sir, I didn't want to charge the fellow at all. I had no intention of charging him.

Q MR. PEACOCK: But you left two up and took one down?

A Yes.

Q And when he came back you asked him to take the others down?

A Yes.

Q And he replied no fucking way?

A Yes, and as a matter of fact he said: "What are you doing with that one there", he said; "That's mine, that's my property".

I said; "I don't consider this to be your property because it was done on a piece of cardboard", it was quite neatly done, I submit when it was put on there but the thing -- my main concern at that time was the fact that we knew that there were drugs coming into the institute and it seemed that he was the man to go and see.

Q What happened then?

A I pointed this out to him that he was the man to go and see about drugs in the West Wing and he said; "It's just a joke".

I said; "Remove the rest". Again he said; "No f'in way".

So I said; "Nurse, the only thing to do is to put you on charge", and he said; "It will take 10 of you fuckers to move me."

Q Now, where were you at this stage, were you right in the wing?

A We were standing at that time beside the guard cubicle.

Q I'm sorry?

A Down beside the cubicle, on the right hand side of the cubicle.

Q And he said that it would take 10 of you to get him down?

A Yes.

Q. What happened then?

A Well, I put my arm around the back of him and I said; "Come on, let's go" and he said; "No way".

He swung his arm back and he caught me in the chest here so I said; "If that's the way you want it I will have to call for some help", and I told Mr. Woods who was in the cubicle to call for some help. Incidently, at this time there was still inmates coming from the dining hall into the West Wing and I thought there might be a confrontation with those too.

Q Were you outside of the grill gate or were you inside?

A I was standing outside the grill gate right on the cubicle side.

Q Well, after he swung around did he go back to his bed or against the wall or what happened?

A He was no where near his bed.

Q Well, what happened?

A He was standing right against the wall.

Q What happened?

THE COMMISSIONER: Before you leave that, was this near the guard's cubicle?

A Near the guard's cubicle.

THE COMMISSIONER: But still in the West Wing?

A Yes, just inside the main door.

Q MR. PEACOCK: Alright, what happened?

A He made a gesture first of all to go to punch me and I said; "If you want to, Nurse, you can", he backed off then and then -- from the time that Mr. Woods phoned the guard room and by the time they came down was between five and ten minutes, yes, it was between five and ten minutes and at this time I was still trying to convince him that he should do it and go to the meditation cells and receive his punishment by the book, I told him already that I was going to charge for the pictures on the locker.

Q Alright, up until this time had you made any mention of anything that he was wearing?

A Yes, he had a small bracelet on and I said; "Where did you get that from?" and he said; "Oh, some guy gave it to me", and I said; "That is a contriban too, take it

off.

Q Was this before he held up his fist?

A Well, it was at the time that he brought up his fist.

Q What did he tell you once you told him to take the beads off?

A He said; "It's none of your f'in business", I'm sorry; "None of your fucking business".

MR. MACDONALD: I wonder if the witness can speak up, please.

THE COMMISSIONER: Yes, could you stand up and perhaps that would be better. If you get tired you can sit down.

A He said; "It's none of your fucking business", he said; "I got this from another room-mate".

So I said; "It's still a contraband and you can take that off too", and he said; "No way am I going to take it off".

I said; "I don't want to charge you for that it's stupid. We will see what comes of it".

Q What happened next?

A The next thing is Mr. Eadie came to the West Wing with Mr. Merriam and there was a few other officers that I couldn't see.

Mr. Eadie said to Nurse the same thing, he said; "Will you come down quietly, you are on one charge now will you come down

quietly".

Merriam came down and he was a little more diplomatic than Mr. Eadie in certain ways he said; "Would you like to take that band off and we will forget about the whole thing", in his own words and Nurse said; "No, I'm not", and once again repeated something to the effect that it would take 10 of you fuckers to get me down there but we didn't have 10 guards to spare to take him down to the hole.

Q Well, how many were there?

A I couldn't tell you exactly, sir, because as I say Mr. Eadie came beside me and Mr. Merriam was, like, across from Eadie in a semi-circle around us and then there were a few other officers behind.

Q Well, Mr. Merriam asked him if he would take the beads of and then they would forget about it?

A Yes.

THE COMMISSIONER: Forget the whole thing?

A Well, this I couldn't say, sir, whether he meant the whole thing but there would have been another charge placed for having the contraband --

THE COMMISSIONER: Was he referring to the charge with respect to the contraband?

A It was with regards to the contraband, this is what I assumed. In actual fact I didn't want to charge the fellow for the contraband because I thought it was stupid to charge him but he got so obnoxious about the whole thing

that there was nothing else that we could do plus the fact there were a few other inmates that crowded around us and they were saying "Kick him in the nuts, Brian" and "Pull his eyes out", things like that.

THE COMMISSIONER: Saying that to who?

A Saying that to Nurse, Brian Nurse.

Q MR. PEACOCK: Alright, what happened then?

A Well, Mr. Merriam said he said; "He is going to the meditation cell", and I said; "Fine".

I put my hand on his shoulder and right away someone come across from the back with a billy club and caught my hand and his shoulder at the same time. I had a little bruise on my hand the next day but it wasn't much to worry about.

Q Do you know who did that?

A No, I couldn't tell you, sir. It was the people that were behind me.

THE COMMISSIONER: Would they be Correctional Officers?

A Yes. They must have been.

Q MR. PEACOCK: At this time was Nurse just standing there?

A He was standing there -- well, no, at this time he was the one that started kicking and fighting before any officer went for him or tried to attack him or anything.

Q No officer was going for him who was he fighting with,

then?

A He kicked me first in the leg, now, I showed inspector Roberts the remainder of the bruise when he first investigated it.

Q Well, let's get this straight now. You have indicated that the first thing that happened is that you placed your hand on Nurse's shoulder and at that point Nurse was hit with a billy club?

A No, the first thing that happened was Nurse started swinging his fist and his feet, that is the very first thing that happened. I got a hold of his shoulder and Nurse kicked me in the leg, the billy came down and hit me on the hand and on Nurse's shoulder.

Q What happened then?

A Somebody, I don't know who it was, I believe it was Mr. Merriam sprayed the tear gas and I got quite a bit of it myself and Mr. Eadie, I believe, was standing next to me and he got some in his eyes also.

Q What was this, tear gas in a billy club?

A No sir, just an ordinary spray.

Q And Mr. Merriam had that?

A Yes.

Q And what else occurred, did you strike Mr. Nurse?

A No, I grabbed his head and then the full effect of the gas took place, the next thing I remember is I was laying on the floor and Nurse was below me, I believe it was Nurse at the time, I was told afterwards that it was

Nurse and Nuse is below me and Mr. Eadie was also on top of me and I was trying to get off from Nurse.

Q Did you strike Nurse during this altercation?

A Well, this I couldn't say for sure to be quite truthful because it was one of these things that I couldn't see and I was just trying to get up, I could have been hitting one of our officers.

Q Did you punch Nurse in the face?

A Not at any time that I can remember.

Q Did you see any of the other guards punch him in the face?

A No sir.

Q Aside from this time that you and Mr. Nurse were simultaneously struck with the billy did you see any of the other guards strike him with a billy club?

A No sir. At that time the gas was taking full effect of my eyes and they were smart, they were watering and as a matter of fact when I got home my wife was quite concerned about my eyes, they were swollen.

Q Alright, what happened after you ended up on the floor with Nurse and Mr. Eadie?

A Yes.

Q What happened then?

A Mr. Eadie told me to stay in the wing because the other inmates were coaching Nurse, Kennedy, Ramchuk and others were coaching Nurse on to keep fighting "Kick him in the nuts", things like this.

Mr. Eadie instructed me to stay -- well, I couldn't do too much because of my eyes and --

Q Did you stay?

A Yes, I did.

Q Who took Nurse away to the segregation cell?

A I know Mr. Eadie went and Mr. Merriam went. Who else I couldn't say.

Q Who stayed with you?

A Just Mr. Woods stayed with me.

MR. PEACOCK: Answer other counsel, please.

MR. WILKINS: No questions.

THE COMMISSIONER: Do you wish to defer your cross-examination?

MR. MACDONALD: I would, sir.

THE COMMISSIONER: Mr.Meurin.

CROSS-EXAMINATION BY MR. MEURIN:

Q MR. MEURIN: Sir, did you request Woods or was there a request made to bring up clubs?

A No, I believe I mentioned tear gas but I don't think I mentioned anything about clubs.

Actually I could have taken the fellow myself, but in a way I just didn't want to after the offence, after he took a swing at me I thought that I had to have witnesses there on my part.

Q Well, this was three days after the July 17th incident

in the West Wing?

A Yes.

Q Now, I believe you mentioned Kennedy and Ramchuk as being the ones egging Nurse on?

A They were definitely there yelling and carrying on.

Q How do you know that?

A Because I seen them prior to the actual action, you know, they come through the wing from lunch and Kennedy was the first one to mention this, he said; "Why don't you kick his nuts, Brian".

Q You saw him say this and you recognized his voice?

A Oh, yes, definitely, I recognized his voice.

Q And what about Ramchuk?

A Ramchuk was in the background, like, after the grill gate was closed, after the inmates went through Ramchuk was doing all the yelling saying things like; "Hit him again", things like this.

Q Which Ramchuk would this be?

A I believe his name is Gary.

Q Is he still in the institution?

A I haven't been in the institution for three weeks -- oh, I'm sorry, I was there one night but I was outside.

Q To your knowledge he has not been transferred?

A Not to my knowledge.

Q Were there any other inmates that you are aware of that were yelling or egging Nurse on?

A There were a couple that I don't remember, oh, yes,

Cordes, Cordes, yes, he was one of the, sir, he was standing next to Ramchuk.

MR. MEURIN: I have no further questions.

A Incidently, sir, I charged Nurse and I felt that he was dealt with sufficiently by the Warden otherwise I might have taken that charge to an outside court due to the fact that he assaulted me.

Q MR. MEURIN: As far as you are concerned he struck the first blow?

A Oh, definitely.

MR. MEURIN: No further questions.

MR. PEACOCK: Mr. Macdonald indicates that he would like to commence his cross-examination this afternoon.

THE COMMISSIONER: At 1:30, then?

MR. PEACOCK: That is satisfactory.

THE COMMISSIONER: Adjourned until 1:30.

(Hearing adjourned)

PROCEEDINGS TAKEN ON OCTOBER THE 23RD 1973 AT 2:00 P.M.:

MR. PEACOCK: Call Mr. Cater, please.

WALTER JAMES CATER, having been previously sworn, cross-examined by Mr. MACDONALD, testified as follows:

THE CLERK: You have been previously sworn.

A Yes.

MR. PEACOCK: Mr. Cater, you realize that you are still under oath?

A I do, sir.

MR. PEACOCK: Would you answer Mr. Macdonald's questions, please.

CROSS-EXAMINATION BY MR. MACDONALD:

Q Mr. Cater, I would like you to run through exactly what happened again.

A Right from when I first -

Q Right from when you noticed the sign on Mr. Nurse's locker and what happened.

THE COMMISSIONER: Now, Mr. Macdonald, I wonder if that's quite fair to the witness. I know this is cross-examination and I certainly intend it to be general, but I think you could assist him, you know, as to where you want to go. Now, you take him there.

Q MR. MACDONALD: Where did you find the sign.

THE COMMISSIONER: Yes, that's right.

A It was on his locker.

Q MR. MACDONALD: Where?

A On his locker.

Q Was it pasted on?

A It was thumb tacks.

Q And I take it there were two other signs?

A There were two other signs.

Q And you tore one down?

A I took one off. I didn't tear it down. I took it off.

Q What was the reason you gave for not taking down the other two?

A Well, first of all, if there was any question about the Deputy or Assistant Deputy Warden would have to see this.

Q You mean where they were?

A I mean if I had taken them down, I had no evidence to say that they were on the locker.

Q Well, wouldn't your word have been taken?

A I don't know.

Q Was this for a warden's inquiry?

A This would have been for the warden's inquiry, yes. I was wanting a witness to the fact that the signs were on the locker.

Q Now, did you say this morning that you felt that this pointed out that he was the drug distributor for the west wing?

A It did in a sense, yes. He had "Brian MDA-STP" and a few other words underneath that sign, the one I took off and there were other signs referring to this sign. Things like STP and et cetera.

Q Was it the fact that you felt that he was the dispenser of drugs or just the fact that this was a violation of regulations involving signs of any kind up?

A No. It was a violation of regulations.

Q That was the real thing?

A Yes, that was the real thing. That is what he examined me for.

Q And you have no facts to back up your suggestion that he was the distributor of drugs in the west wing?

A I didn't suggest that, I don't believe. I just said that's what he had on the sign.

Q And you drew that implication from that?

A I drew an implication from that, yes.

Q From the sign alone?

A From the sign.

Q Now, when you discussed the matter of the sign with Mr. Nurse, where were you?

A We were sitting in the guard's cubicle. At least I was sitting in the guard's cubicle and when he came in, Mr. Woods said, "Nurse, Mr. Cater wants to see you now."

Q And where was Nurse?

A Nurse was standing just in the doorway of the cubicle.

Q So, you were both outside the grill gate at this point?

A That's correct.

Q And I suggest to you that there wasn't really that much problem with the sign.

A There was inasmuch as he refused an order to take the

other two signs down.

Q And didn't you quickly move into the incident about the beads?

A Not really, until he put his fists up like this and I saw the beads and I said "You can take them off, too."

Q He put his fists up?

A Yes.

Q Show me how he did it?

A Like this.

Q He went like this?

A Yes.

Q And were you in fear that you were going to be hurt?

A I don't think I would have been hurt by Nurse, no. He may have hit me, but I don't think he would have hurt me.

Q And isn't it a fact that Nurse told you that he would take the beads off when he got back to his bed?

A No. He didn't say anything like that to me. He absolutely refused to take them off.

Q He didn't say to you that he would take them off once he got back to his bed?

A No.

Q And you are sure about that?

A I am sure about that, yes.

Q Was he aggressive when he put his fists up?

A Yes, very agressive. He was aggressive right from the first moment I spoke to him.

Q Did he throw a punch at you?

A He didn't throw a punch at me. He swung his arm back on me as I explained this morning. He caught me in the chest.

Q Now, did he ever say, "I will take it off when I get back to my bed"?

A No, sir. If he did, I didn't hear it. But, I'm pretty sure he didn't say that.

Q Mr. Cater, I am showing you a statement. It's a photocopy. It's not signed and I wonder if you could take a look at it and tell me if you recognize it as a statement you made to Inspector Roberts?

A This isn't correct because Mr. Roberts asked me this and I said, no.

Q Well, why would Mr. Roberts put it in there?

A I don't know why he put it in there. Is Mr. Roberts here?

Q That represents the statement that you gave to him. Is everything else in there correct?

A These were notes that Mr. Roberts was taking and I never re-read this or signed it afterwards.

THE COMMISSIONER: That is not signed, Mr. Macdonald?

MR. MACDONALD: No, it's not, sir.

THE COMMISSIONER: Well then, had you not better read it?

Q MR. MACDONALD: You never told Inspector Roberts that he would take them off when he got back to his bed?

A Not to my recollection. Well, as I say, I'm pretty sure.

Q "Pretty sure" but you are not really sure, are you?

A I am sure. Okay, okay, I am sure.

Q Well, which is it?

A I am sure he didn't say to me that he was going to take them off. He might have said it to somebody else, that he was taking them off, but he didn't say it to me at that time.

Q Now, at this point we are still in the cubicle. Is that right?

A No, we are outside the cubicle.

Q When did you move outside the cubicle?

A When I told Nurse that he was on charge.

Q When did you tell him that he was on charge?

A At that time.

Q At which time?

A When he refused to take the signs down.

Q He was on charge right from that point?

A That's right.

Q What words did you use to Nurse at that point?

A What words did I use to Nurse at that point? I told him that he was on charge for refusing to take the signs down. Exactly what words, I don't remember exactly what words I used. I used so many words since then.

Q Did you tell him that he was going to the hole?

A No, I didn't tell him that he was going to the hole. He said to me, though, "You are not taking me to the hole."

Q Well, if he was on charge, where was he going to go?

A He most likely would have gone to the cell block, owing to his medical circumstances and this is where we usually put fellows who have a little bit, you know, have medical problems. We don't usually put these guys in what you call the hole. We prefer to call it the meditation cells now.

Q I am sorry, what?

A We prefer to call it the meditation cells. Not the hole. And actually it isn't the hole as it was known years ago.

Q It's the meditation cells?

A Meditation cells.

Q For thinking purposes?

A That's right.

Q Where they can reflect upon how evil they have been?

A Well, you can put it that way if you wish.

Q Now, when you and Nurse moved outside the cubicle, did you take him by the arms?

A No. I put my arm around his back to move him through the door and that's when he slammed my arm and caught me on the chest with his right arm.

Q I am sorry, I didn't follow that. What happened?

A He was standing against the wall and I put my arm around his back and I said, "Come on, we are going down", and he says, "You are not taking me."

Q You will have to speak up, Mr. Cater because I can't hear you.

A I put my arm around his back and I said "Come on, you are

coming down", and he says "You are not fucking well taking me." He says "It will take ten of you guys to take me."

Q You said "You are coming down"?

A Yes.

Q And what did that mean?

A Down to the guardroom.

Q Then what happened?

A Then he swung back with his arm and he caught me here. At that time I told Mr. Woods to call the guardroom and send some men down.

Q And bring the gas?

A And bring some gas.

Q Why did you need gas?

A Because the other inmates were coming back from lunch at that time and the grill gate was still open into the wing. And at that time I believe there was about 19 inmates in the wing.

Q And how many were inside the wing?

A How many were inside the wing? I would say better than 75% of them.

Q At what point were they all inside?

A I couldn't tell you even if they were all inside after this took place, but I think the majority of them were inside.

Q What were they doing as they were filing in?

A They were making remarks about, "Kick him in the nuts, Brian",

and things like this.

Q But they were all filing in properly, weren't they?

A Except for one or two that hung about at the gate there.

Q Well, the reason that you requested for the gas was that Nurse was acting up?

A No, not necessarily. You have got that wrong.

Q That's wrong too, is it?

A Yes. Because as I said this morning, I could have taken Nurse by himself.

Q There was no need, then, I take it, for Nurse to be gassed. Is that right?

A In my opinion, no, there was no need. There was no need for me to be gassed, either.

Q When did the grill gate shut?

A I couldn't tell you the exact time or moment that the gate shut. But, it shut during the time that a few of the fellows started to come forward.

Q Did it shut before or after Merriam got there?

A Before.

Q Before?

A Yes.

Q So that when Merriam and Eadie and the other guards were there, how many guards were there in all?

A I couldn't tell you how many guards were there.

Q Were there more than five?

A I know Mr. Eadie stood next to me and Mr. Merriman stood on the far side of me. I'm not looking for guards. I'm

looking at the inmates.

Q Were there more than three of you?

A Yes, there must have been more than three.

Q The rest of the prisoners were all behind the grill gate?

A They were all behind the grill gate except those that may have needed medication or other things.

Q And from that point, I take it, any of you could have subdued Nurse. Is that right?

A I think so, with a fight.

Q Certainly two of you would have no problem?

A That's correct.

Q How many guards got involved in the scuffle with him?

A In the actual scuffle, I know that I was on the floor, Nurse was on the floor and Mr. Eadie was on the floor and this was right in the doorway of the west wing.

Q Did this one inmate manage to knock you both down?

A Well, I don't really know what happened.

Q Is that because you were gassed?

A Partially. But, the thing is that all I know is that we were apparently pulled and we got jammed in the doorway and we all went down, the three of us.

Q You don't really know what happened, then. It's possible that you struck Nurse in the face with your fists, isn't it?

A No. I wouldn't say it's possible that I struck him in the face, because when I was getting up I had my hands on his body. If I had struck him in the face, I would have been up like this and not down here.

Q Well, isn't it true that you told us that you really don't know what happened?

A That is what I am telling you. I really don't know what happened when we were on the floor.

Q Are you sure that you didn't strike him in the face?

A I am certain of that. I would have felt it for one thing with me fists.

Q What injuries did you sustain?

A Pardon?

Q What injuries did you sustain?

A A kick on the right leg.

Q Do you know how you got that?

A Yes. Nurse kicked me.

Q Did you see his foot make contact with your leg?

A Yes. You remember, this is when part of the gas was being used.

Q Now, where were you standing when Merriam and Eadie started to talk to you?

A I was standing on the extreme left. That would be on Nurse's right.

Q Did you see anybody strike him with a billy club?

A As I say, when Nurse started flaring out - actually he went bezerk. When he started flaring out with his fists and feet, I put me hand on his shoulder to try and drag him away from the wall and I got a billy club that hit me on this part of my hand here. I don't know who it was that hit me with the billy because he come over my shoulder,

whoever it was.

Q Well, as the Commissioner said this morning, it certainly wasn't an inmate, was it?

A Oh, no.

Q Was there any need for billy clubs at this point?

A No, I don't think so.

Q There was no need for gas and no need for billy clubs in subduing this man?

A No.

Q And probably no need for more than two men to have handled him, assuming from what you have said is correct.

A Probably. But, I have seen violent men that have had to have six or eight men carrying him.

Q Now, how tall are you?

A Just over six foot. Six foot and a half.

Q What do you weigh?

A I weigh 225.

THE COMMISSIONER: How old are you, sir?

A 45 and a heart problem.

Q MR. MACDONALD: Did Nurse ever swing at you? Did he take a punch at you?

A He took that one swing with his arm, but it definitely contacted with me body.

Q Knocked the wind out of you, did it?

A Not exactly.

Q No, it didn't at all, did it? It just touched you.

A It more than touched me. I felt it, put it this way.

But, it didn't wind me. The solar plexus are down here, not up here.

Q And you say that your attitude in this thing was that you wanted to give Nurse every break and that you didn't want to charge him?

A This is my attitude with all the inmates there. If I can even talk a guard out of laying a charge, I will do so.

Q Now, you told him pretty quickly that he was going to be charged, didn't you?

A I didn't tell him pretty quickly. We had a little argument prior to that in the cubicle which I told you earlier on.

Q And who was responsible for bringing the man who had been charged before the Warden's Court?

A It would be the Assistant Deputy Warden on duty at the time.

Q How quickly do they generally come before a Warden's Court?

A 24 to 48 hours, to my knowledge.

Q When was Warden's Court for Nurse in this particular instance?

A When was his Warden's Court? On the 23rd.

Q Three days later?

A That was three days later.

Q And were you present?

A No, sir.

Q Why wouldn't you be present?

A I wasn't called. Warden's Court, I think, was held in the morning and I was on evening, after I had gone off shift. I am not too sure.

Q Well, you were the one who placed him on charge.

A Yes.

Q Is that usual for the man who placed him on charge is not called?

A Well, it just isn't always necessary.

MR. MACDONALD: That's all, thank you.

CROSS-EXAMINATION BY MR. MEURIN:

Q Sir, I take it that on occasion it's somewhat of a simple matter to give a beligerant inmate or one that's fighting, as Nurse was in this instance, a shot of gas just to make him stop fighting and to settle things down. Is that right?

A Yes.

Q And this may have been one of the reasons why gas was used just to settle things down rather than keeping on with the kicking and struggling and fighting?

A More than once gas has helped by, you know, stopping a complete fight.

Q In other words, if gas hadn't been used, maybe Nurse would have landed a couple more punches or more harm would have been done either to himself or to one of the guards?

A I think we used as much force as was necessary in this case.

Q And I take it, sir, that a large number of guards or correctional officers also have an easier time subduing an inmate in that each one can sort of grab an arm or leg rather than one or two people having to try and subdue him?

A That's right.

MR. MEURIN: No further questions.

EXAMINATION BY THE COMMISSIONER:

Q Mr. Cater, a shot of tear gas from a foot distance is pretty drastic, isn't it?

A Well, that's not what it was. Now we have, sir, that CN.

Q Shall we say it's not as potent as army tear gas?

A Nowhere near that, sir, no.

Q I see.

A On thing about CN, it does, you know, splash a spray and this is why I got my eyes and I believe it was Mr. Eadie who was the other person that got it in his eyes, too.

Q You have had experience in army tear gas, have you?

A Yes.

Q And you say there is definitely a difference?

A Yes, definitely.

Q How much experience had you had with the army?

A I went through quite a bit in the infantry.

Q Now, Nurse is 5'6?

A About that.

Q And 135 lbs.?

A Yes.

Q And you could have probably handled him yourself?

A I believe so, sir.

Q And I will be frank with you; the billy club concern me. Do you know who swung it?

A No. Honestly I don't know who swung it, sir, because it came from behind me and at that time they were putting the

gas in his eyes.

Q And about that time you had a shot, too?

A Yes.

THE COMMISSIONER: Those are all the questions I have. Anything arising out of that?

MR. PEACOCK: I have one further question if I may.

RE-EXAMINATION BY MR. PEACOCK:

Q Mr. Cater, during this altercation that you had with Mr. Nurse, when the scuffling started, did you punch him in the stomach?

A As I say, I may have done this when we were getting up off the floor. You know, I had to have something to lean on, but I wouldn't say it was actually a punch.

Q What I am wondering, did you stand back and give him a good punch in the stomach during this thing?

A No, sir.

Q When you were scuffling around, do you recall your arm coming back to land a blow on him, like in the stomach?

A No, sir.

MR. PEACOCK: Thank you.

A You mean actually standing back like this and taking a swing?

Q Yes.

A How about when you were in the melee, when you were all grabbling around and you were trying to get him subdued, were you grabbing his arm to try to hit him?

A No. I was just trying to grab him. I was still trying to get ahold of the leg or shoulder or something like that, but he was moving so fast that we couldn't get ahold of him.

MR. PEACOCK: Thank you.

CROSS-EXAMINATION BY MR. WILKINS:

Q Mr. Cater, you said that you have a heart condition?

A Yes.

Q Have you had a heart attack?

A I have got embolism in the lungs and it occasionally goes.

Q Are you under doctor's care for that?

A Yes.

Q Were you at that particular time this instance occurred?

A Not at that particular time, but embolism is something that stays with you and it's liable to burst and carry on through your heart at any time.

Q How long have you had this condition?

A It would be the 24th of May last year.

MR. WILKINS: I have nothing further, sir.

CROSS-EXAMINATION BY MR. MACDONALD:

Q Did I understand you, Mr. Cater, when you were getting up off the floor you had to have something to push yourself up and that something happened to be Nurse?

A Yes. Nurse was underneath, as I explained. I was on top of Nurse and Mr. Eadie was on top of Nurse and the three of us went down at the same time. There was no intention ever to kick him down or anything like that at that time?

Q And you just sort of had to push yourself off of him to

get up. Is that right?

A Yes.

Q I see.

MR. MACDONALD: All right.

THE COMMISSIONER: Thank you, Mr. Cater.

MR. PEACOCK: Thank you, Mr. Cater. Would you call Garry Ramchuk, please.

GARRY VERN RAMCHUK, having first been duly sworn, examined by Peacock, testified as follows:

Q Mr. Ramchuk, you have previously given evidence at this Inquiry?

A Yes, sir.

Q On the night of July 20th 1973, approximately three days after the West Wing incident, were you still housed in the West Wing?

A Yes, I was.

Q In Bed No. 48?

A Yes.

Q That would be the bed closest to the guard's cubicle, would it?

A Yes.

Q And did you see that night an incident involving an inmate by the name of Nurse?

A Yes, I did.

Q Would you tell the Commissioner what you observed that night, please?

A That afternoon.

Q Yes, that afternoon.

A We had just come back into the Wing from eating our dinner and we all went back into the West Wing. Most of us were already in the wing and we observed Mr. Cater, the Chief Guard from the Gymn, standing in the guard cubicle at the front of the West Wing. He had been, like searching lockers or whatever and he had a sign in his hand and he had called out to Brian Nurse. He called him out. He mentioned something to him about a sign on his locker and that he would be keeping it. Now, we were all in the Wing by this time and there was Mr. Cater, the guard that was on duty in the West Wing and Brian Nurse were up front. The gate was shut and they were discussing something about the sign, I guess, that he had and he shouldn't have had it.

THE COMMISSIONER: Mr. Ramchuk, would they be on the wing side of the gate or were they on the other side of the gate?

A On the other side.

THE COMMISSIONER: And was the gate closed?

A Yes. Now, after the conversation of the sign, he said to Nurse - I was lying on my bed at the front and I heard him say to Nurse to take some beads off his wrist and he had a string of beads on his wrist and I heard Nurse say, "I will take them off when I get back to my bed", and he said, "You are not going back to your bed."

The conversation went on and Nurse asked where he was going and Cater said, "Take

the beads off or I will take them off." Nurse said, "Well, I don't know where I am going. I would like to know. I will take them off when I get back to my bed because I have got to cut them off", he said. So, after that conversation, I guess he put Nurse on charge and I can't really remember any other conversation that went on, but then I remember other guards coming in and a fight proceeded. I'm not exactly sure of the number of guards that came in, either, but a fight broke out and I seen Nurse being beat by the guards and taken out.

Q MR. PEACOCK: If I may interject. Did you hear anybody when the guards got there telling Nurse to go to the hole or to go downstairs?

A When they got there?

Q Yes. After the other guards arrived.

A When the other guards arrived, there was no more conversation that I heard.

Q Did you hear Mr. Merriam say to Nurse that he was going to go down to the hole?

A No, sir.

Q Did you hear anyone tell Brian Nurse at any time during this instant to go down to the hole and Brian Nurse refusing to go?

A Oh, Mr. Cater told him he would be going down to the hole. He said, "You are not going back to your bed. You are going down to the hole."

Q And what did Nurse say when Cater said that, do you recall?

A He said "Why am I going to the hole?"

Q You never heard Nurse tell him that he wasn't going to the hole or that they would have to take him to the hole?

A No, I never did.

Q When you saw the other guards arrive, you say a fight broke out. Was Nurse kicking and resisting in any way?

A He didn't really have a chance to do something.

Q Did you see any of the guards strike Nurse with a billy club?

A Yes, I did.

Q Can you tell us which guard that was?

A Yes. It was a guard by the name of - I'm not sure of his last name, but I think it's Uibeherse.

Q Do you know his first name?

A No, I don't.

Q Can you describe him physically for us?

A Yes. Slender build, short blonde hair.

Q His hair was blonde, was it?

A Yes. I know him. I know him personally, but I'm not just sure of his name.

THE COMMISSIONER: Would you recognize him again?

A Oh, yes.

Q MR. PEACOCK: Now, when this scuffle was going on, are you able to tell us how many guards were involved?

A I seen four to be sure.

Q And that would be Mr. Cater?

A Mr. Cater, Mr. Merriam, Mr. Uitbeyerse and Mr. Holland.

Q And when you say Mr. Uitbeyerse, you are not sure if that's his name, but you know that you had dealings with a fellow with short blond hair?

A I am not sure of the pronunciation of his name.

Q How long did this scuffle go on?

A I would say about two, three minutes.

Q And when this altercation was going on out there, were some of the inmates in the West Wing yelling encouragement to Brian Nurse, do you recall?

A No. Yes. What happened the fight had broke out and everybody was on their beds and we heard Mr. Merriam yelling when the other guards were coming in. He was yelling at Nurse and that's when a few of us come up to the gate. The gates were locked. I for one was up at the bars and the fight was going on and I seen him getting punched. And I said to the guards in the Wing, "Can't you stop this?" I said "Is this necessary?"

Q Did any of the inmates yell things like, "Kick him in the nuts, Nurse", or something along those lines or, "Let him have it", or yelling encouragement like that?

A No, sir.

Q But you went up to the front and spoke to Mr. Woods, did you?

A Yes.

Q And asked him if this was necessary, could they stop it?

A Yes.

Q Do you recall what you heard Mr. Merriam yelling?

A Not really. Just that he was saying "You smart punks", this type of thing.

MR. PEACOCK: Answer other counsel, please.

CROSS-EXAMINATION BY MR. WILKINS:

Q Mr. Ramchuk, were you sitting on your beds when you first heard the conversation taking place between Mr. Cater and Mr. Nurse?

A No, I was up combing my hair.

Q Was that right by your bed?

A Right up at the mirrors. That's closer to the front.

Q Well, how far away would you be from Mr. Cater and Mr. Nurse at that particular time?

A From me to you.

Q You could hear clearly what was going on?

A Pretty well, yes.

Q Pretty well would you hear or couldn't you?

A Well, I could hear it basically, but I wasn't listening to it completely.

Q So, your recollection of the conversation may or may not be exactly right?

A From what I hea rd is exactly what I heard.

Q Well, what did you exactly hear? Let's go through that again.

A I heard when he called Brian Nurse up to the front and he told him that this sign is illegal to have. That you cannot

have this sign on your locker. Now, he said he was going to keep the sign. That was the end of that conversation. Now, I don't know if this was the end of it totally, but he seen beads on his wrist and he said, "Take those beads off your wrist", and Brian said, "What for?" He said, "Take them off because I told you to take them off and Nurse said "Well, I will take them off when I go back to my bed". And he said "You are not going back to your bed", so Nurse said "Why? Where am I going?". He said "Listen, I told you to take the beads off your wrist, or I will take them off for you, if you like." And Nurse said, "Well, I would like to go back to my bed and cut them off because they will fall apart if I pull them off." Then the conversation came, "Well, you are not going back to your bed. You are going to the hole."

Q At what point did the rest of the inmates start moving up towards the front?

A At the point where Brian Nurse got punched.

Q When was that in relation to this conversation?

A Well, there was another inmate already up at the bars with me and we were told to leave. The two of us were already up to the bars.

Q Who asked you to leave?

A Mr. Cater said to get out of here.

Q But you didn't.

A I left. I went back to my bed and sat on my bed. Now, when the other guards come in, I got up again because the

fight proceeded and I come up to the bars.

Q When did the fight start? Before the other guards got there.

A No. When they came in.

Q So, part of the time you don't know what went on while you were walking back to your bed. You weren't looking at what was going on and they were behind you at that stage when you were walking back to your bed?

A From when this other guard come, I seen every moment of it.

Q From the time you left the actual scene you were looking through the grill until the time you walked back to your bed, there was a time lapse there where you didn't see what went on?

A Exactly.

Q And quite possibly there was things said that you didn't hear at that particular time?

A Yes, sir.

Q Now, this guard that you say used a billy club, who did he hit with the billy club?

A Who did he hit with the billy club?

Q Yes.

A I can't exactly say who he hit.

Q Did you see him hit anybody with it?

A Yes. I seen him hit someone with it in the direction of Brian Nurse, but I didn't see the blow strike. I seen him put his hand up and hit but I didn't see Brian get hit with it.

Q Could you not see Mr. Nurse?

A At that time I couldn't, no.

Q So, not only did you not see a lot of things that happened from the time you walked back to your bed, but there were also times during the scuffle that you couldn't even see Mr. Nurse. Is that right?

A That's right.

Q Did you ever see Mr. Nurse kick anybody or punch anybody?

A No.

Q But it's quite possible that he could have at the time but that you couldn't see him?

A If he did, I didn't see him.

Q I see. And this officer's name, to the best of your knowledge, is Mr. Uitbeyerse?

A Right.

Q He's a blonde fellow?

A Right.

Q Slight build, did you say?

A Yes.

Q How old would he be?

A Oh, about 40.

Q Do you know his first name?

A No, I don't.

Q Did you ever talk to Mr. Nurse after he returned from the hole?

A Many times.

Q Did you see him right after he came back from the hole?

A Right after.

Q I was working in the gym when he come out of the hole. Well, just out of the hole. His condition, well he stopped at the gym and we were having coffee in the gym and he was walking to the guardroom and he had black eyes. I asked him what happened. I said, "What happened to your eyes?" He said that was as a result of what happened in the fight.

Q Did you see any cuts on him?

A No, no cuts.

Q I take it, Mr. Ramchuk, that you and Mr. Nurse discussed this matter a number of times?

A This matter?

Q This particular incident.

A We have talked about it, yes.

Q And did you help him make a decision to lay a complaint about this matter?

A No, sir.

Q You never discussed making a complaint about this matter?

A No, sir, I never. As a matter of fact I didn't want to make a complaint about it. They asked me to come in and make a complaint.

Q Who asked you?

A Mr. Roberts.

Q Why didn't you want to make a complaint?

A Because I really didn't want to get involved with any of it.

Q Isn't the reason because in fact what you saw were fragmented

pieces of a scuffle that you didn't see the whole incident?

A I seen it completely. I was right there in front.

Q Except to the fact that your back was turned and see what was going on and couldn't see Mr. Nurse?

A The only time my back was turned was when Mr. Nurse and Cater were alone together and I went to my bed and directly turned around to him then.

Q But there was still some time, Mr. Ramchuk, that you did not see what was going on?

A I seen it basically what was going on at all times through the whole fight until I couldn't see him any more. The only reason I say I didn't see Nurse get struck with the billy club and I would like to be exact on it, I seen it going towards him, Mr. Uitbeyerse hitting towards him and putting his hand down to strike him. I'm sure he wasn't striking Mr. Merriam or one of the other guards. The fight was involved with Brian Nurse at the time. I seen Nurse get punched in the face and in the stomach and from there I didn't see, you know, because there were five guards standing around and I couldn't see the whole fight.

Q You never saw the billy club strike anybody?

A No.

Q I see.

MR. WILKINS: Thank you.

CROSS-EXAMINATION BY MR. MACDONALD:

Q One question, Mr. Ramchuk. Why didn't you want to give evidence?

A Why? Well, the way it all turned out, there wasn't going to be anything involved in it. It wasn't going to come out into Court and finally I guess when it finally was coming out, I was called up to give evidence. I gave my statements and they told me they would like me in the Inquiry and I said, "Well, I can only say what I seen. I imagine other people had seen it, too. You do have enough witnesses. I wasn't involved,"I said.

Q Why didn't you want to get involved?

A It wasn't a point of getting involved. Why didn't I really want to get involved? Because I thought I would have no hope in the gaol after I did.

Q What do you mean by that?

A Because I thought - I don't know. I just thought that it would go hard on my doing any time. I have six months to do yet.

Q Hard in what sense?

A In all senses. In all senses to better myself in the Correction.

Q Did you expect more pressure from the guards if you gave evidence?

A Not from the guards necessarily but from the front staff.

Q How do you mean by the front staff?

A Well, the Warden, the Deputy Wardens.

Q Do you feel that they didn't want this to get out?

A I certainly feel they didn't want it to get out.

MR. MACDONALD: Thank you.

CROSS-EXAMINATION BY MR. MEURIN:

Q Sir, don't you feel any pressure from any inmates as a result of what you say today?

A Do I?

Q No, I don't.

Q You mean you are not afraid of what the other inmates might do as a result of what you say here today?

A No. I'm not afraid.

Q You are not afraid of what might happen to you?

A I am here to speak what I seen. That's all.

Q Do you feel that force or violence is a part of the prison system? Is it necessary?

A Is it necessary?

Q Yes.

A I can't see how it could be necessary.

Q Then why, sir, were you involved in a fight with Inmate Graham, recently?

A Why was I involved in a fight? It was through a hockey game. Professional hockey players fight right on television.

Q Sir, do you deny that you made any statements at all during this incident that might be construed as egging Nurse on, i.e., "Hit him" or "Kick him in the nuts" or anything like that?

A No, sir, at no time.

Q You made no such statement at all?

A No, sir.

MR. MEURIN: No further questions.

EXAMINATION BY THE COMMISSIONER:

Q Mr. Ramchuk, does Nurse, I understand he suffers from epilepsy. Are you aware of that?

A No, I wasn't.

Q Perhaps you may not want to answer this question and I won't push for an answer. But is Nurse known for his violence in the Institution?

A No, sir, he isn't.

THE COMMISSIONER: All right, thank you. Any questions arising out of that?

MR. PEACOCK: No, sir. Thank you, Mr. Ramchuk. Would you Call Gunther Cordes, please.

GUNTHER CORDES, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Cordes, you are an inmate at the Calgary Correctional Institution, are you?

A Yes.

Q How long have you been there?

A Approximately six months.

Q And what are you in there for?

A Possession of a narcotic.

Q And how long is your sentence?

A Two years less a day.

Q Now, were you in the West Wing on the 20th of July?

A Yes.

Q And you saw an incident involving an inmate by the name

of Brian Nurse?

A Yes.

Q Where were you? Were you in your bed at the time this incident arose?

A No. I was right up at the bars. Well, when it first started, when the guard called him out, I was at my bed.

Q And where is your bed, what number is it?

A 51.

Q Is that fairly close to Mr. Ramchuk's bed?

A What bed was he in?

Q 48.

A Yes, it's right over the wall.

Q Across the wall from where Ramchuk was that night?

A Yes.

Q And that night Nurse got called out of the dorm, did he, by Mr. Cater?

A No. It was right after lunch.

Q Oh, I am sorry. At noon, yes. And they were outside the grill gate. Is that correct?

A Yes.

Q What did you see and hear?

A Well, I heard him call Nurse out, so I saw them arguing so I went up to see what was going on and I heard Mr. Cater saying something to Mr. Woods about getting the club and gas and then he told Nurse to wait right there and then he left and all the guards came back and one of the guards said to Nurse, "Are you coming now?" And he said, "Well,

not until I know why." And they said something about taking him and Mr. Cater hit him.

Q Well, let's go back now. You say they said something about "taking" him. Did one of the guards say, "If you don't come we will take you" or something like that?

A Yes.

Q What did Nurse reply?

A I don't know. He just sort of mumbled something to that. He just mumbled something.

Q Did you hear him say something to the effect that, "It will take more than you fellows to take me to the hole", or something along that line?

A No.

Q Anyway, how many guards came back, do you recall?

A Well, five or six, I believe. I'm not sure exactly how many.

Q Can you tell us the name of some of those guards or all of them?

A There was Mr. Cater, Mr. Merriam and Dennis Anaka, the Social Worker, Mr. Holland and a couple of other guards. I don't remember who they were or what their names were.

Q What happened? You say you saw Nurse get punched?

A Yes. Mr. Cater punched him and then they all rushed in on him.

Q Where did Mr. Cater punch him?

A I don't know. In the upper part of his body. Mr. Cater had his back to me and he punched him from back here

(indicating) and I don't know exactly where it hit him. It was in the upper part of his body and it sent him into the garbage cans.

Q Now, had you seen Nurse swinging his fists or talking up until that time?

A No. He started struggling after they all jumped on him, but not before that.

Q This was after he had been hit by Mr. Cater?

A Yes.

Q What happened then? What did you observe then?

A Well, they all just rushed him and they were all grabbing for him and struggling and they all dragged him out of the dorm into the hall and I couldn't see after that.

Q Did you see anybody hit Nurse with a billy club?

A No. I know that one or two of them had billy clubs, but I didn't actually see anybody hit him with the billy club.

Q Do you recall one of the guards having blonde hair?

A Yes.

Q Do you know which guard that was?

A I don't know his name.

Q Did you see him with a billy club?

A I think so. I'm not sure.

Q Are you able to tell the name of any of the guards that had billy clubs on that occasion?

A Well, no, I can't, because I don't remember. It all happened pretty fast and I don't know who had the billy clubs. I do remember one or two billy clubs, though.

Q Do you remeber Ramchuk coming up to the grill gates and speaking to Mr. Woods, the guard in the cubicle and asking him if he couldn't stop this thing?

A Yes.

Q Were you up there at this time?

A Yes.

Q Were any of the inmates, including yourself and Mr. Ramchuk, yelling encouragement to Nurse during this scuffle, things like, "Kick him in the nuts", "Thata boy, Brian", and things like that?

A No. Mostly they were just yelling at the guards.

Q Were you doing any of the hollering at that time?

A Yes.

Q What did you holler?

A I was calling them "cowards" and "dogs" and saying "Is this what you call a correction"? and things like that.

Q Now, you say, you understand that Nurse was taken down to the meditation cells that night or that afternoon?

A Yes.

Q When did you next see him?

A About a week later, after he came back to the Wing.

Q Did you observe any injuries on him?

A Two black eyes.

Q Were they good and black?

A Well, they were black eyes, you know.

MR. PEACOCK: Answer other counsel, please.

CROSS-EXAMINATION BY MR. WILKINS:

Q How many of the inmates were there up along the grill doors yelling and whatever, standing and watching this incident?

A Well, I don't know exactly. I would say at least 10, maybe 20.

Q Now, this one person that you think had a billy club, this was a blonde guard, was it?

A Well, yes, I think so. I know there was at least two guards there, regular guards and I can't remember who they were. I tried to remember, but I can't.

Q Well, let's just decide who was there. Mr. Cater was there?

A Yes.

Q Who else was there?

A Mr. Merriam, Mr. Holland, Dennis Anaka and I can't remember - well, Mr. Woods, but he was just standing in the doorway.

Q So that's five that you know for sure?

A Yes.

Q And you think there was another blonde fellow there?

A Yes, I think so. And as well as another guard besides that, too. I think there was two other guards besides the one I mentioned, but I can't remember exactly.

Q Have you seen that blonde guard before this incident?

A I guess I must have. I must have seen them all at one time or another.

Q Well, do you recall seeing him before?

A Well, I can't even recall who it was, so I can't answer that.

Q But, you know what he looks like?

A No, I don't.

Q Just that he had blonde hair?

A I can't remember who he was.

Q Have you ever seen anybody since that time who looked like him?

A I could have.

Q Well, did you or didn't you?

A I don't know. I don't pay that much attention to the guards.

Q Just like you weren't paying too much attention to the actual bungling and fighting that day?

A I was watching that.

Q I see. And in your opinion there were two guards that had billy clubs?

A One or two. I can't remember exactly. No, I know I saw one for sure. I don't know if I saw two or not.

Q But you never saw that billy club strike anybody?

A No.

MR. WILKINS: Thank you.

MR. MACDONALD: No questions.

CROSS-EXAMINATION BY MR. MEURIN:

Q Did anybody say anything to the effect or did any inmate say anything to the effect, "Kick him in the nuts, Brian" or anything like that?

A No. I never heard anything like that.

Q Where were you standing during all this time?

A Right at the front gate.

Q You never heard that?

A No, not that I recall.

Q Not that you recall?

A No.

Q But it might have been said?

A Well, it could have been. There was a lot of shouting.

Q Did you say anything like that?

A No.

Q Did you say anything that might be construed as egging Nurse on?

A No. I didn't say anything to Nurse at all. I was just hollering at the guards.

Q What were you hollering?

A Well, I was calling them "Cowards" and saying, "Does it take five of you to take one seventeen year old kid?" and calling them "dogs" and saying, "Is this what you call correction?"

Q But you never said anything that might be construed as egging Nurse on at all?

A No. I never directed anything at Nurse.

Q Did Nurse ever swear during this whole thing?

A I don't think he said hardly anything while it was happening. He was just struggling to try to get free.

Q What about from before?

A Well, I didn't hear the conversation before.

Q You could hear Cater, but Nurse just mumbled?

A Yes. He just mumbled when they said, "Are you coming now or do we have to take you?"

Q You never heard Nurse refusing to go in any way at all?

A Yes. He said "Not until I know why."

Q You never heard him say that there was no way he was going or anything like that at all?

A Well, he could have said, "No way, not until I know why."

Q But you never heard him just outright refuse?

A No.

MR. MEURIN: No further questions.

RE-EXAMINATION BY MR. PEACOCK:

Q Were you aware of a ruling in the Institution regarding the posting of posters and of pictures on lockers?

A Yes.

Q And were you aware that they weren't supposed to be up there?

A Yes. But other inmates had them. Quite a few inmates had pictures of their families on their lockers.

Q Pictures of photographs. Is that right?

A Yes.

Q There weren't an awful lot of posters hand-drawn around?

A No.

Q And as far as you know, at that time that was something that wasn't allowed in the Institution, the hanging of posters?

A Yes.

Q What about beads? Were you aware of anything with respect to the wearing of beads or anything like that?

A Well, no, I wasn't, not before that, because there was a lot of inmates wearing beads.

Q Do they have a bead-making place at the Institution?

A Well, no. Beads are one of the hobbies. A lot of the inmates do beadwork, so a lot of the inmates were wearing beads around their neck.

MR. PEACOCK: All right, thank you.

THE COMMISSIONER: Thank you very much.

MR. PEACOCK: Mr. Commissioner, could we have a short recess.

THE COMMISSIONER: Yes.

(Brief recess).

MR. PEACOCK: Call Douglas Petrie, please.

DOUGLAS HAROLD PETRIE, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Petrie, you are an inmate at the Calgary Correctional Institution?

A That's right.

Q And how long have you been there?

A Five months.

Q What is your sentence?

A Two years less a day.

Q What were you sentenced for?

A Armed robbery.

Q And were you, on the 20th of July, 1973, housed where, in the West Wing?

A No. I was in the South Wing.

Q Did you observe an incident involving an inmate by the name of Brian Nurse that day?

A Yes, I did.

Q How did you come to see this?

A Well, I saw it in the hall.

Q Now, the South Wing is right across the hall from the West Wing, isn't it?

A No. Down the hall from the West Wing.

Q How did you happen to be in the hall?

A Well, I was going to work early that day.

Q And what did you see, if you would just tell the Commissioner, please.

A I saw Brian and some guards come out and they fell, I guess, or one of them hit him. It could happen either way, I guess. And then they just picked him up and took him away.

Q Now, how many guards were there?

A I don't know for sure. Four or five.

Q Do you know the name of any of the guards?

A Yes. I recognized three of them.

Q Who did you recognize?

A Mr. Merriam, Mr. Anaka and I'm not sure about Mr. Cater, but I think he was there, too.

Q Mr. Anaka is a social worker or a counsellor?

A Yes, he is.

Q When you first saw them, were they coming around the corner or just coming down the hall or what happened?

A No. They were just coming out of the entrance to the West Wing.

Q Now, you didn't see what went on past the entrance?

A No.

Q All you saw was the group of them coming out of the entrance into the hallway?

A That's right.

Q And you say they all fell?

A Yes.

Q Were they all struggling when they came out the door?

A Well, I think Brian was trying to release himself from, I guess when they were holding him and I think they all tripped when they fell out the door or something, you know, It could have happened that way.

Q You say he was struggling. Did they have ahold of him as he came out the door?

A Yes.

Q And you indicate he was struggling in some way that it looked like he was trying to get loose?

A Yes.

Q Then the whole bunch of them took him onto the floor?

A Yes.

Q Did you see any of the guards throw a punch at Mr. Nurse at that time?

A Well, I thought I did, but I'm not completely sure. I couldn't say.

Q Did you see him throw a punch at any of the guards?

A No.

Q Did you hear anything that was said between the bunch of them as they were falling into the hallway?

A No. It was just a lot of screaming and yelling. I couldn't make any of it out, though.

Q How far away were you from this when you saw it all?

A I was about 50 feet.

Q Did they pick him up or did he get up or how did they all get back on their feet again?

A They picked him up and dragged him by each arm and took him away.

Q Did you observe him being hit or slapped on his way down the hall?

A No. I couldn't see passed there.

Q Did you observe that he was injured or that Brian Nurse was injured at all?

A Well, it looked like it.

Q Well, what did you see?

A His hair was all messed up. That's about it, you know. I couldn't make it out too well.

Q Did you notice if he was bleeding or anything?

A No.

MR. PEACOCK: Those are all the questions I have. Would you answer other counsel, please.

CROSS-EXAMINATION BY MR. WILKINS:

Q Mr. Petrie, did you give two written statements?

A Yes, I did.

Q I wonder if you just might look at these and tell me if these are the two statements?

A Yes, they are.

Q One is dated September the 24th. Which one was the last one you wrote?

A That one. (September 24th).

Q This is the more accurate of the two?

A Yes.

Q So, this other statement that is undated, which you wrote, is it fair to say that it's not very accurate?

A No, it isn't.

Q Why did you give a second statement?

A Well, I talked to Detective Roberts and I just decided to write it out again because I think I was wrong the first time.

Q It's your own handwriting, is it the second one?

A Yes.

Q And your conclusion is, and I'll read it "I'm not sure who hit Brian, if he was hit at all."

A Yes.

Q And that's your conclusion?

A Yes.

MR. WILKINS: Thank you.

CROSS-EXAMINATION BY MR. MACDONALD:

Q That all took place outside the entrance to the West Wing or in the entrance or where exactly?

A Just outside.

Q At this point they were escorting him out?

A Yes.

Q Is that true?

A Yes.

Q You don't know what went on beforehand?

A No.

Q Did you at one time form the opinion that he was cut?

A Yes.

Q Is that wrong?

A Well, I guess it is, yes.

Q Well, how did you come to form that opinion?

A I just thought he was.

Q Why did you think he was?

A Well, I guess he was pretty messed up. That is about it.

Q Did you see any blood?

A No.

Q But you came to the conclusion that he was cut?

A Yes. Well, the way they fell, I guess, I figured he was.

Q Did you see Brian Nurse kick anybody?

A No, I didn't.

Q Did you see him hit anybody?

A No.

Q Well, when it really comes right down to it, Mr. Petrie, you

don't remember what you saw and you didn't really see anything other than some people moving in a state of confusion?

A (No answer).

THE COMMISSIONER: Will you answer counsel.

A What is the question again?

Q MR. MACDONALD: All right, we will try it again. What you saw was nothing other than just a bunch of people milling around?

A Yes, that's about it.

Q So you really don't have anything to tell us one way or the other?

A No.

MR. MACDONALD: Thank you.

MR. MEURIN: No questions, sir.

THE COMMISSIONER: Thank you, Mr. Petrie.

MR. PEACOCK: Call William Kemp, please.

WILLIAM AUSTIN KEMP, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Kemp, you have given evidence here before?

A Yes.

Q And you were in the West Wing on July 20th, 1973?

A Yes.

Q What bed were you in, do you remember?

A 1.

Q That would be right up towards the front?

A Right at the front, yes.

Q You saw an incident that day involving an inmate by the name of Brian Nurse?

A Yes, I did.

Q Would you tell the Commissioner everything you saw that day, please.

A All right. When I first - the first time I saw Brian Nurse, I was standing at the outside of the gate, talking to Mr. Cater and, well, I didn't hear what was going on, so I just went up to see what was happening. Then I heard Cater tell Nurse to take some beads off his wrist and Brian said, "Okay, I'll take them off as soon as I get back to my bed." And Cater said "You are not going back to your bed. You are going to the hole", and Brian says "I'm not going anywhere", and Cater says "Well, you are." And then Brian says "Well, I am not going anywhere until I know where I am going." So, Cater said that he was going to the hole for refusing a direct order and he said he didn't refuse any direct order, which he didn't, neither. He said he would take them off as soon as he got back to his bed. Then Cater went into the office and he said something to Mr. Woods and a few minutes later, about five or six other correctional officers came down and Mr. Merriam was amongst them and he said to Brian Nurse, "Are you going to the hole peacefully or are we going to have to take you?" Brian says, "I'm not going anywhere." So, then Mr. Cater threw a punch

at Brian and hit him in the stomach.

Q Did you see that?

A Yes, I did.

Q And at this stage had Nurse kicked at any of the guards or swung at any of the guards?

A No, he didn't do nothing. He just resisted.

Q In what way?

A Just trying to hold himself on the spot.

Q Had they tried to move him when he was holding himself on the"spot" before this punch was thrown?

A No. He - the punch was the first thing.

Q Where did he hit him?

A In the stomach. Around the solar plexus.

Q And what happened then?

A Well, Brian fell back into the garbage pails and then the rest of them jumped in and I saw Mr. Merriam use this can of mace he had in his hand.

Q He shot it into Brian Nurse's face?

A In that area.

Q Were any other inmates up at the grill gate at the time this altercation broke out besides yourself?

A Yes. I would say a half a dozen of the men were up there.

Q They had all come up to take a look?

A No. They all come up to try and get at the guards.

THE COMMISSIONER: Try and what?

A Get at the guards.

THE COMMISSIONER: Get at the guards.

A Yes.

Q MR. PEACOCK: The grill gate was closed, so they couldn't get at the guards?

A Right.

Q Were they hollering things at the guards as this was going on?

A Yes.

Q What were they saying?

A They were calling them "dogs" and "pukes" and all sorts of names, I suppose.

Q Did you do any of the hollering?

A Yes, quite a bit.

Q What did you say?

A Basically "dogs", "pukes", "You got to pick on a 17 year old kid."

Q Do you recall somebody yelling at Brian "Get him, kick him in the nuts", and things like that?

A I didn't hear that. It could have been said, but I didn't hear it.

Q You didn't holler that?

A No.

Q Now, after you saw Mr. Cater punch Brian Nurse in the stomach, you say Brian fell back into the garbage pails?

A Yes, he did.

Q Did any of the guards fall with him?

A Well, no. They were bunched in pretty close so I couldn't really say.

Q Do you recall them ending up in a pile on the floor?

A No. Brian was the only one that went down, but I don't think he hit the floor.

Q Was he struggling after he got up from the garbage cans or did they just jump on him when he was lying there?

A He was still struggling when they carried him out. They used the mace on him.

Q Pardon?

A They were using the mace on him or this cannister.

THE COMMISSIONER: Whatever it was, but it was as they were carrying him out?

A Yes.

Q MR. PEACOCK: Who had the mace?

A Mr. Merriam.

Q Did you see one of the guards strike Brian Nurse with a billy club?

A No, I didn't.

Q Did you see any of the guards there that had billy clubs?

A No. They might have had them, but they would have been concealed.

Q You didn't see any guard using a billy club?

A No.

Q Do you know who the guards were that were there?

A I can't say I have seen any of them except Mr. Cater and Mr. Merriam since then.

Q I take it when they took him out of the room and into the corridor, you didn't see anything further?

A No. They closed the door.

Q Did you hear anything further?

A Yes. I could hear Brian screaming and I could hear them beating him going down the hall.

Q What did you hear?

A Could hear very loud slaps and Brian was screaming and that was no screaming of joy.

Q He was hollering on the way down the hall and you heard them slapping and hitting him in the hall. Is that correct?

A Yes.

Q Do you recall Brian Nurse saying to Mr. Merriam or Mr. Cater when they advised him that if he didn't come along to the hole that they would have to take him and he said it would take more than you fellows to get me to the hole or something to that effect?

A Yes.

MR. PEACOCK: Answer any other counsel, please.

CROSS-EXAMINATION BY MR. WILKINS:

Q You heard the whole incident over the beads, I take it?

A Yes.

Q And Mr. Nurse had some beads where? On his wrist, was it?

A He had on a band around his wrist and one around his neck.

Q What exactly was said about the beads?

A Well, he just told him to remove them.

Q And what was Mr. Nurse's reply?

A He said "All right, I will remove them as soon as I get

back to my bed.

Q Did he give a reason for not removing them then ?

A Yes. He didn't want to lose them.

Q He specifically said that?

A Yes.

Q He said, "I don't want to take off these beads now because I will lose them?"

A Well, something along that line. Maybe those weren't the exact words, but along those lines.

Q And you are sure he said that?

A Sure.

Q Do you wear beads, Mr. Kemp?

A No.

Q How many of the inmates wear beads?

A Well, at the time quite a few of them did. I don't know now.

Q 50%?

A Maybe that many.

Q Maybe more 75%?

A Possibly.

Q Now, when Mr. Nurse fell into the garbage cans, did he 'knock' a couple of garbage cans over or what?

A He just knocked them back against the wall. I don't think any of them fell over.

Q He landed on the floor?

A Well, he started to go down, but he never hit the floor.

Q He never hit the floor?

A No.

Q At any time during that scuffle he never hit the floor?

A No.

Q And at no time during that scuffle did you see anybody else hit the floor?

A No.

Q Now, you say that you rushed forward to get at the guards.

A What do you mean, to get at the guards?

A Not really that. I didn't say I did.

Q Well, you said that we rushed up to get at the guards.

A I was there. I was standing beside the grill.

Q And you never yelled any encouragement to Mr. Nurse?

A No. I was just listening at the time.

Q How many times was the cannister of mace used?

A Just the once.

Q And that was long after or that was after they got Mr. Nurse?

A Yes. They were carrying him out.

Q So, did they have him completely off the ground, carrying him out?

A Yes.

Q Was he prone?

A Yes.

Q Was there a couple on each leg and a couple on each arm?

A One on each leg.

Q And he was not touching the floor?

A No.

Q And as he was being held by all these people, somebody

squirted this in his face?

A Yes.

Q Did you see anybody else get squirted with this substance?

A No.

Q You are positive that nobody else got squirted with this substance?

A That day?

Q At that particular incident?

A Nobody else I saw.

Q Now, I don't like to be repetitious, but I believe my learned friend, Mr. Peacock asked you this; did you ever hear Mr. Nurse say that, "It's going to take more than you to get me out of here down into the hole."

A Yes.

Q Who did he say that to?

A Mr. Cater.

Q At what stage did that happen?

A That was just after - let' see Cater said "You are going to the hole for refusing a direct order."

Q And Mr. Cater and Mr. Nurse were the only people involved at that time?

A Yes.

Q And then in answer to that question or statement Nurse said, "It's going to take more than you to get me into the hole."

A No. Cater said, "Do I have to move you?"

Q Right. And Nurse said, "It's going to take more than you."

And then at that point, did Mr. Cater solicit some help?

A Yes. I think that's about the time.

MR. WILKINS: Thank you.

THE COMMISSIONER: No questions.

MR. MEURIN: No questions.

MR. PEACOCK: Thank you, Mr. Kemp. Call Steven Rottenbucher, please.

STEVEN ROTTENBUCHER, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q You are as an inmate at the Calgary Correctional Institution. Is that correct?

A Yes.

Q How long are you there for?

A A period of 18 months.

Q How long have you been there?

A 10 months.

Q And what were you sentenced for?

A Possesion of a burgler tool.

Q On July 20th 1973, were you housed in the West Wing at the Institution?

A No, I wasn't.

Q Where were you housed?

A East Wing.

Q Did you see an incident that day involving an inmate by the name of Brian Nurse?

A Yes, I did.

Q And where were you when you observed this incident?

A I was leaving the dining room to go back to the Wing.

Q And you were therefore in the hall. Is that correct?

A Yes.

Q What did you observe?

A Well, first I heard a bunch of wrestling, it sounded like garbage cans and I turned around and there was an inmate. I didn't know who the inmate was and a number of guards. There was fists going towards the inmate and I don't know, a stick or something in the air and a pair of cowboy boots flying around. I don't know who the boots or who the guards were.

Q Cowboy boots?

A Yes.

Q Were they on anybody?

A Yes, they were.

Q Do you know who they were on?

A No, I don't.

Q But they were just flying around, were they?

A They were kicking, but missing.

THE COMMISSIONER: There was somebody in the boots, though?

A Yes, there was.

Q MR. PEACOCK: And was there just one inmate in this group?

A Yes.

Q How many guards did you see?

A I don't know. It would be in-between four or six. I couldn't say.

Q Do you recall any of the guards by name that you observed?

A No, I don't.

Q You say you heard some garbage cans wrestling around. Would that be inside the door to the West Wing?

A It would be in the lobby of the West Wing.

Q And shortly after that, a group came out of the West Wing into the hall?

A Yes.

Q And did you see the whole group fall down at any time?

A Well, they were, like bent over towards the inmate.

Q And he was down?

A Yes. The inmate was down.

Q You don't know whether he was the one that had the cowboy boots on?

A No. It wasn't the inmate because the inmates are not allowed to wear cowboy boots.

Q I see. They were just guards and one inmate there so we would have to conclude that the cowboy boots you saw flying around had a guard in them?

A That's true.

Q And as this scuffle continued, did you see somebody with a stick of some kind, you say?

A Well, it was in the air and I couldn't say if it was going towards them. In fact it could be - I don't know,

but it was there.

Q Did you see anybody hit anybody with a fist?

A I didn't see no punches. All I seen was arms, feet and whatnot flying around in the air.

Q Well, I gather it was a bit of a melee that you observed?

A Yes.

Q And could you observe the inmate struggling?

A Well, there was resistance or else there wouldn't be all that commotion.

Q So, he was resisting in some way and the guards were endeavouring to get him back under control?

A Yes.

Q Would that be fair?

A Yes.

Q Did they ultimately get him back on his feet?

A Not for a period of time I seen the incident, no.

Q You just saw them all flailing around down there?

A Yes.

Q Did you leave?

A I was told to leave, by a custodial officer.

Q And that's all you observed that day?

A Yes.

MR. PEACOCK: Fine. Those are all the questions I have. Thank you. Answer any other counsel.

CROSS-EXAMINATION BY MR. WILKINS:

Q Whoever this inmate was, you saw him laying on the ground, did you?

A Yes.

Q And there was no doubt in your mind that he was laying on the ground?

A There is no doubt at all.

Q He was flat out on the ground?

A Yes.

Q And did you see when he started to leave with the guards or when the guards took him with them?

A Well, all I seen was that they were dragging him out of the West Wing and they were going out towards the hall and then I was told to leave.

Q How was he being removed?

A With force.

Q Well, yes. I appreciate that, but was he on his own feet being moved?

A No, he wasn't.

Q Was part of his body on the floor?

A The lower half was and he was getting dragged.

Q So he was on his knees?

A Yes.

Q Did you ever see any use of mace or tear gas?

A Well, I never seen nothing like that.

Q You signed a statement, didn't you?

A Yes, I did.

Q I am showing you this statement. Is that your signature

that appears on it, dated September 24th, 1973?

A Yes, it is.

Q And you know what is in that statement?

A Yes.

Q Now, you say in the statement that "Nurse in my opinion is a type of radical inmate."

A Yes.

Q I take it you know Mr. Nurse?

A Well, I don't know him personally. I see his actions.

Q What brought you to that conclusion, that he is a radical inmate?

A Well, I don't know. If somebody had been harping on him, he harps back to a further extent. Like, he always wants the better of it. I don't know. He wants it better for himself.

Q Are you saying that he is always arguing with people?

A I am not saying he is always arguing with people. But, when there is pressure on, he reacts. that's all.

Q You have seen that happen on numerous occasions?

A Well, any time I seen him is when he is getting harped, yes.

MR. WILKINS: I see. Thank you.

MR. MACDONALD: No questions.

CROSS EXAMINATION BY MR. MEURIN:

Q Would you say Nurse is chippy?

A Chippy?

Q Yes.

A I don't know what you are talking about. Explain yourself.

Q Got a chip on his shoulder.

A At the time when this happened, I do believe he did.

MR. MEURIN: No further questions.

THE COMMISSIONER: Thank you.

MR. PEACOCK: Would you call Donald Madsen. I believe he's in the hall.

DONALD EDWARD MADSEN, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Madsen, on July 20th, 1973, were you an inmate at the Calgary Correctional Institution?

A Yes.

Q And I gather you are now released?

A Yes, I am.

Q On July 20th, 1973, you were housed in the West Wing. Is that correct?

A Yes.

Q And around noon, on your way back from lunch, you observed an incident involving an inmate by the name of Brian Nurse?

A Yes, I did. It was after dinner.

Q Would you tell the Commissioner what you observed that day, please.

A After dinner I went back to the wing, went back to my bed and I noticed something going on up at the front of the wing. So, I left my bed and went up fairly close to the

front gate to see what was going on and I heard Mr. Cater tell Brian to take the beads off his arm. And Brian told him he would when he got back to his bed, because he wanted to save the beads. And Mr. Cater -

THE COMMISSIONER: Told him what?

A To save the beads. And Mr. Cater told him he wasn't going back to his bed and Brian said that he wanted to know why.He couldn't see any reason for not going back. Then Mr. Cater had Mr. Woods phone the guardroom for additional help to take Brian to the hole.

Q MR. PEACOCK: Before he phoned, did you hear Mr. Cater tell Nurse that he was going to the hole?

A I can't recall him saying that.

Q Do you recall hearing Nurse say that he wasn't going to the hole, that it would take more than Mr. Cater to take him there?

A I don't remember hearing that.

Q All right. When you say he had Mr. Woods phone to the guardroom for more help -

A Yes.

Q And did more help arrive?

A Yes. About five or six of their guards came down and Mr. Merriam and the Assistant Deputy Warden was with them.

Q Do you recall the names of any of the other guards?

A No, sir, I don't.

Q All right, what happened?

A Mr. Merriam and Brian or Mr. Merriam told Brian that he

was going to the hole and Brian said that he could see no reason for him going to the hole and that he wouldn't go and then I saw Mr. Cater throw a punch and I didn't see it land, but he threw it and Brian fell down among the garbage cans against the hall in front of the Wing and when the rest of the guards jumped in, Brian struggled a bit and they carried him out of the Wing and shut the door.

Q Did you see anyone use gas during this struggle?

A No, I didn't.

Q Did you see Brian Nurse kick or strike Mr. Cater before Mr. Cater threw this blow?

A No, sir.

Q Did you see any type of a struggle or use of force prior to Mr. Cater striking this blow?

A No.

Q Did you see any of the guards strike Brian Nurse with a billy club?

A No, I didn't.

Q Were you inside the Wing at this time?

A Yes, I was.

Q And I gather a good number of the West Wing inmates were up at the grill gate watching this?

A Yes.

Q Were they hollering encouragement to Nurse?

A I didn't hear any encouragement to him. All I heard was people hollering at the guards, calling them "dogs" and

"cowards" and "bastards" et cetera.

Q Did you see Nurse after this incident happened? When was the next time you saw him?

A The next time I saw him was on Sunday in the visiting room.

Q Did you observe at that time if he was suffering from any injuries?

A His eyes were black.

Q You observed that he had black eyes?

A Yes.

MR. PEACOCK: Those are all the questions I have. Will you answer other counsel, please.

MR. WILKINS: No questions, sir.

MR. MACDONALD: No questions.

CROSS-EXAMINATION BY MR. MEURIN:

Q Did Nurse make any statement to the effect that,"There is no fucking way I am going to the hole", or anything like that?

A As I can recall, he said that he wouldn't go to the hole because he could see no reason for him to go. He hadn't done anything to go to the hole for.

Q Did he make any statement to the effect that it was going to take 10 of them to get him to the hole or something to that effect?

A He said that they would have to take him. That he wouldn't go. I don't know if he said it would take 10 of them or anything like that, but he said that he

wouldn't go.

Q He definitely did make a statement to the effect that they would have to take him, that he wasn't going to go willingly?

A Yes.

MR. MEURIN: No further questions.

THE COMMISSIONER: How long have you been released?

A On the 20th.

THE COMMISSIONER: Of?

A October.

THE COMMISSIONER: Thank you very much.

MR. PEACOCK: That, sir, is the evidence that we have for this afternoon. Our schedule has again gone awry. I think we have gone through about eight witnesses today. If we can adjourn until ten o'clock tomorrow morning.

THE COMMISSIONER: How many witnesses do you propose to call tomorrow?

MR. PEACOCK: Well, I have got one more inmate.

THE COMMISSIONER: Is this in connection with this incident?

MR. PEACOCK: Yes. And I believe eight or perhaps nine custodial staff with respect to this incident as well.

THE COMMISSIONER: Same incident?

MR. PEACOCK: Same incident. So, I expect

if it goes like this today, we may very well finish this incident tomorrow.

THE COMMISSIONER: And we have been through three incidents and this would be the third?

MR. PEACOCK: Yes, and then two more.

THE COMMISSIONER: And then the general.

MR. PEACOCK: Then the general.

THE COMMISSIONER: All right, tomorrow morning at ten o'clock.

(Hearing adjourned sine die).